

## **ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 124, 260, 267, and 270**

**RIN 2050-8E44**

### **Hazardous Waste Management System; Standardized Permit; Corrective Action; and Financial Responsibility for RCRA Hazardous Waste Management Facilities**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed Rule; Request for Public Comment.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing revisions to the RCRA hazardous waste permitting program to allow a “standardized permit.” The standardized permit would be available to facilities that generate hazardous waste and then manage the waste in units such as tanks, containers, and containment buildings. This proposed revision to the RCRA permitting program reflects one of the recommendations of EPA’s special task force, known as the Permits Improvement Team (PIT), which was convened to evaluate permitting activities and to make specific recommendations to improve these activities. The standardized permit should streamline the permit process by allowing facilities to obtain and modify permits more easily while maintaining the protectiveness currently existing in the individual RCRA permit process. In addition to the requirements proposed in this Federal Register notice, we also are soliciting comment on two issues related to RCRA treatment, storage, and disposal facilities. We are requesting comment on how all facilities receiving permits (standardized, individual, and permits by rule) can satisfy RCRA corrective action requirements by conducting cleanup under the direction of appropriate alternative state cleanup programs. We also are requesting comment on the conclusions about captive insurance in a March, 2001 report by EPA’s Inspector General, and

on a requirement that insurers that provide financial assurance for hazardous waste and PCB facilities have a minimum rating from commercial rating services.

**DATES:** Comments on this proposal must be submitted by [insert date 60 days after publication].

**ADDRESSES:** If you wish to comment on this proposal, you must send an original and two copies of your comments, referencing docket number F-2001-SPRP-FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. You may also submit comments electronically through the Internet to: [rcra-docket@epamail.epa.gov](mailto:rcra-docket@epamail.epa.gov). Comments in electronic format must also reference the docket number F-2001-SPRP-FFFFF. If you choose to submit your comments electronically, you must submit them as an ASCII file avoiding the use of special characters and any form of encryption.

You should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to:

RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling 703 603-9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page. The index and some

supporting materials are available electronically. See the Supplementary Information section of this Federal Register notice for information on accessing the index and these supporting materials.

**FOR FURTHER INFORMATION CONTACT:**

For general information, contact the RCRA Hotline at 800 424-9346 or TDD 800 553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412-9810 or TDD 703 412-3323.

For more detailed information on specific aspects of this rulemaking, contact Vernon Myers, Office of Solid Waste, 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (703-308-8660), (Myers.Vernon@epa.gov).

**SUPPLEMENTARY INFORMATION:**

The index and some supporting materials are available on the Internet:  
<http://www.epa.gov/epaoswer/hazwaste/permit/index.htm>

The official record for this action will be kept in paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RCRA Information Center.

Our responses to comments, whether the comments are written or electronic, will be in a notice in the Federal Register or in a response to comments document we will place in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Acronyms used in today's preamble are listed below:

APA: Administrative Procedures Act  
 EAB: Environmental Appeals Board  
 EPA: Environmental Protection Agency  
 CAMU: Corrective Action Management Unit  
 CFR: Code of Federal Regulations  
 EO: Executive Order  
 FR: Federal Regulations  
 HSWA: Hazardous and Solid Waste Amendments  
 MOU: Memorandum of Understanding  
 MSWLF: Municipal Solid Waste Landfill Facilities  
 NTTAA: National Technology Transfer and Advancement Act  
 OMB: Office of Management and Budget  
 PIT: Permit Improvement Team  
 PPE: Personal Protection Equipment  
 RCRA: Resource Conservation and Recovery Act  
 RFA: RCRA Facility Assessment  
 SBREFA: Small Business Regulatory Enforcement Fairness Act  
 SWMU: Solid Waste Management Unit  
 UMRA: Unfunded Mandates Reform Act

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## **I. Overview and Background**

### **A. Why do this Proposed Rule and Preamble Read so Differently from other Regulations?**

We wrote today's proposed regulations and preamble in "readable regulations" format.

We tried to use the active rather than the passive voice, plain language, a question-answer format, and other techniques to make it easier for the readers to find and understand information in today's rule and preamble. The pronoun "we" refers to EPA and the pronoun "you" refers to the person who would be subject to these proposed requirements (which could be either a facility

owner/operator or a Director of a regulatory agency). Once promulgated in a final rule, all requirements, including those set forth in table format, will constitute binding, enforceable requirements.

**B. Who is Potentially Affected by this Proposed Rule?**

Today's action, if finalized, could potentially affect an estimated 866 RCRA-permitted private sector facilities which store and/or non-thermally treat RCRA hazardous wastes on-site, using tanks, containers and/or containment buildings. Table 1 below displays the SIC/NAICS code economic sectors associated with these facilities.

**Table 1: Economic Sectors Which Own & Operate Facilities Potentially Affected by this Proposal(Facilities with Eligible RCRA Hazardous Waste Management Units)(a)**

SIC (b)	Economic Sector Description	NAICS (b) equivalent	Count of Potentially Affected Facilities			
			Containers	Tank Systems	Containment Bldgs	Total
0	Agriculture, Forestry & Fisheries	11	21	12	0	
1	Mining, Oil/Gas & Construction	21,23	26	16	0	
2	Manufacturing(c)	31-33,511	427	313	5	
3	Manufacturing (continued)(d)	31-33	285	136	17	
4	Transport, Communication, Utilities	22,48,49,513,562	272	201	10	
5	Wholesale & Retail Trade	42,44,45	175	132	3	
6	Finance, Insurance & Real Estate	52,53	5	2	0	
7	Services(e)	71,72,512,514,811,812	221	183	2	
8	Services (continued)(f)	54,55,561,61,62,813,814	90	38	0	
9	Public Admin, Environment & NEC	92	200	85	4	
Non-duplicative column totals(g) =			800	623	22	866

**Explanatory Notes:**

(a) Source: EPA Office of Solid Waste customized query of RCRIS and BRS databases (data as of March 2000).

(b) SIC = "Standard Industrial Classification" system.

NAICS = "North American Industry Classification System", adopted by the US Federal Government in 1997, replacing the SIC code system (for SIC/NAICS conversion tables see <http://www.census.gov/epcd/www/naics.html> ).

(c) SIC 2 Manufacturing = Food, Textile/Apparel, Lumber/Wood, Furniture/Fixtures, Paper, Printing/Publishing, Chemicals/Allied Products, & Petroleum/Coal.

(d) SIC 3 Manufacturing = Rubber/Plastic, Leather, Stone/Clay/Glass, Primary Metals, Fabricated Metals, Industrial Machinery, Electronics, Transportation Equipment, Instruments, & Misc. Mfrg.

(e) SIC 7 Services = Hotels, Personal, Automotive, Repair, Motion Pictures, & Recreation.

(f) SIC 8 Services = Health, Legal, Social, Museums/Gardens, Membership Orgs & Engineering/Mngmnt.

(g) Some facilities report multiple SIC codes for their operations to the EPA; consequently both the facility and unit total counts in this table exceed the non-duplicative total numbers of facilities shown in the bottom row above.

### C. What is the Agency's Proposal?

We are proposing revisions to the RCRA hazardous waste permitting program to allow a type of general permit, called a “standardized permit.” The standardized permit would be available to facilities that generate hazardous waste and then manage the waste in units such as tanks, containers, and containment buildings. In addition to the requirements proposed today, we also are soliciting comment on two issues related to RCRA treatment, storage, and disposal facilities. We are requesting comment on how all facilities receiving permits (standardized, individual, and permits by rule) can satisfy RCRA corrective action requirements by conducting cleanup under the direction of appropriate alternative state cleanup programs. We also are requesting comment on a requirement that insurers that provide financial assurance for hazardous waste and PCB facilities have a minimum rating from commercial rating services.

**1. What is a RCRA Standardized Permit?** We are proposing to define a “standardized permit” as a general permit for facilities that generate waste and routinely manage the waste on-site in tanks, containers, and containment buildings. The RCRA standardized permit would be a document that EPA or the authorized state issues. It would consist of two components: a uniform portion that is included in all cases, and a supplemental portion that would be included at EPA’s or the Director’s discretion. The terms and requirements that we are proposing as part of today’s rulemaking would constitute the uniform portion of the standardized permit (see **Section VII: Proposed Part 267 Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit**). All facilities that are authorized to operate under the standardized permit would need to comply with these applicable terms and conditions.

In developing a permit process for the RCRA standardized permit, we need to satisfy both

the statutory requirements in RCRA and Agency policy to provide for local public participation and to ensure that permits include all terms and conditions necessary to protect human health and the environment. Under the proposed permitting scheme for standardized permits, the uniform terms of the standardized permit would be the same nationwide, but there would be an opportunity to add conditions tailored to each particular site. This would ensure that we meet the statutory standard of protectiveness (see **Section IV A 1: *How would the Regulatory Agency Prepare a Draft Standardized Permit?***). In order to satisfy the statutory standard and agency policy for local public participation, RCRA pre-application meeting requirements are included in the proposed standardized permit process as well as other opportunities for public involvement that are traditionally part of the permit issuance process (see **Section V: *Proposed Opportunities for Public Involvement in the Standardized Permit Process***).

We are proposing that the documents and certification the permittee submits with the notice of intent to be covered by the standardized permit would become attachments to the RCRA standardized permit (see **Section IX B: *What Information would I need to Submit to the Permitting Agency to Support my Standardized Permit Application***). These documents and certification include the general RCRA Part A information, the pre-application meeting summary, the location standard information, the permittee's self audit, and the owner's certification of compliance and information availability. This is similar to the way individual RCRA permits are issued with sections of the permit application placed in appendices.

**2. Why are we Proposing a Standardized Permit?** In 1984, the Agency proposed a standard permit application form and requirements (49 FR 29524, July 20, 1984) for facilities that generated hazardous waste on-site and then stored it in above-ground tanks or containers. The

1984 proposal considered similar issues that are discussed in today's proposal. However, the 1984 proposal was never finalized at that time because of the new requirements imposed by the Hazardous and Solid Waste Amendments of 1984.

The Agency convened a special task force in 1994 to look at permitting activities throughout its different programs and to make specific recommendations to improve these permitting programs. This task force, known as the Permits Improvement Team (PIT), spent two years working with stakeholders from the Agency, State permitting agencies, industry, and the environmental community. The PIT stakeholders suggested, among other things, that permitting activities should be commensurate with the complexity of the activity. The stakeholders felt that current Agency permitting programs were not flexible enough to allow streamlined procedures for routine permitting activities.

Under the RCRA program, facilities that store, treat, or dispose of hazardous waste currently must obtain site-specific "individual" permits prescribing conditions for each "unit" (e.g., tank, container area, etc.) in which hazardous waste is managed. Experience gained by the Agency and states over the past 15 years has shown that the complexity of waste management varies by type of activity. Some activities, such as thermal treatment or land disposal of hazardous waste, are more complex than storage of hazardous waste. We believe that thermal treatment and land disposal activities continue to warrant "individual" permits, prescribing unit-specific conditions. Similarly, we also believe that the storage of hazardous waste military munitions should continue under the individual permitting program. The site-specific nature of the management of hazardous waste military munitions generally are not routine activities the lend themselves to standardized conditions. However, we also believe that some accommodation can be made for hazardous waste management practices in standardized units such as tanks, container

storage areas, and containment buildings. The PIT recommended, among other things, that regulations be developed to allow “standardized permits” for on-site storage and non-thermal treatment of hazardous waste in tanks, containers, and containment buildings.

Today, we are proposing to revise the RCRA regulations to allow this type of standardized permit for several reasons. First, this new permitting system is intended to streamline the administrative permitting process and shorten the time required to obtain a RCRA permit, without lessening the environmental protection provided by the permit. The new permit system would also reduce the amount of time and administrative resources required to maintain a RCRA permit throughout the operating life of the facility by providing streamlined permit modification and renewal processes for the standardized permit.

Second, such a standardized permit process takes into account the relative risks posed by the on-site storage and non-thermal treatment of hazardous waste in tanks, containers, and containment buildings. These units are relatively simple to design and properly construct. The engineering and construction knowledge and skills necessary to design and construct these units are relatively basic. These units are in common usage in many applications and are frequently bought “off-the-shelf” or built from “off-the-shelf” designs. Industry associations and standards organizations have developed standards for these units that are in widespread use. Past experience with these units indicates that they are simpler to design, construct, and manage than units such as combustion units or land disposal units. Storage and non-thermal treatment of waste in these types of units is generally less complicated than thermal treatment of waste (e.g. combustion of hazardous waste in incinerators, boilers, or industrial furnaces) or disposal of waste (e.g. landfilling). It is easier to control risks at these simpler storage and treatment units. We believe that the streamlined standardized permit, as proposed, would allow adequate

interaction and oversight by the regulating agency and would provide sufficient technical controls to protect human health and the environment.

Third, although the proposed standardized permit would streamline some of the administrative permitting process, we are not proposing to streamline the public participation requirements and technical standards. The proposed standards and requirements are for the most part the same requirements that apply under the current hazardous waste permitting system. We are only proposing minimal changes to the general facility standards and several minor changes to the technical requirements for tanks, containers, and containment buildings. Because the technical standards remain substantially unchanged, the level of environmental protection that the standardized permit offers would remain high.

**3. What would be the Advantages of a Standardized Permit?** The proposed standardized permit application procedures are less cumbersome than the procedures for an individual permit. You would not have to submit the amount of information needed to support an individual permit application; although you would need to keep the required information at your facility. Maintaining your standardized permit should be easier because the permit modification procedures would be less cumbersome for a standardized permit than for an individual permit.

Although the standardized permit process would be more streamlined than the process for individual permits, we are proposing that you must continue to comply with waste management practices, day-to-day housekeeping, and judicious maintenance programs found in the “individual” RCRA permit program. As mentioned, one of the benefits of the proposed standardized permit would be the reduced paperwork burden and effort associated with the permit application submittal and review process. Since, under the proposal, the permitting agency would no longer be involved with detailed review of permit application material associated with waste



management unit design and operation, it would be incumbent on you to properly design, operate, and maintain the waste management units and facility operations subject to the standardized permit.

You should not construe the more efficient standardized permitting process as a reduced compliance burden. Under today's proposal, compliance with proper waste management practices would be ensured by your operation, maintenance and inspection programs and routine inspection by the permitting agency. Similar to the individual permitting system, failure to maintain waste management practices that protect human health and the environment could result in revocation of the standardized permit by the permitting agency, as well as in civil and/or criminal penalties.

In addition the burden reductions for facilities, permitting agencies should be able to more efficiently administer the proposed standardized permit program. Since the application for a standardized permit is intended to be less burdensome than the current RCRA permit requirements, the administrative record should be easier to maintain. Also, the proposed permit modification procedures for a standardized permit should reduce the administrative burden on the permitting agency. EPA welcomes comments on the anticipated advantages - - as well as any disadvantages - - of a standardized permit.

**4. Who would be Eligible for a Standardized Permit?** We are proposing to allow generators to apply for standardized permits for hazardous wastes that they non-thermally treat or store on-site in tanks, containers, or containment buildings. Once a standardized permit rule is promulgated, we would inform you of your eligibility when we make a decision on your permit application. Although you may be eligible for a standardized permit, you would not have to apply for one if you choose not to. Instead you would have the option of applying for an individual RCRA hazardous waste permit. In **Section I E 3: What Topics are we Specifically Requesting**

*Public Comment on?*, we are taking comment on whether treatment/storage of off-site waste should be eligible for a standardized permit.

**D. What are the Differences Between the Existing Individual Permitting System and the Proposed Standardized Permitting Process?**

**1. What are the Steps for Obtaining an Individual Permit?**

Permits for the management of hazardous waste are issued according to the procedures established in 40 CFR parts 124 and 270. The permit process generally follows the steps laid out briefly below:

- You, as the owner or operator of a hazardous waste management facility, develop an individual site-specific permit application.
- Early in the permitting process (i.e., before submitting an application for a permit), you hold an informal public meeting to discuss proposed hazardous waste management activities with community members.
- You then send the permit application to the permitting agency and the permitting agency announces the submission of a permit application by sending a notice to community members.
- The permitting agency then reviews the application for completeness.
- Following this review, the permitting agency either begins to develop a draft permit applying the section 3004 standards that are codified in 40 CFR part 264 or determines that it intends to deny the permit.
- The permitting agency then gives public notice of the draft permit or intent to deny, allows a 45-day comment period, and holds a public hearing, if requested, before it issues or

denies the permit.

- The permit for your facility typically becomes effective 30 days after the issuing agency serves notice of the final permit decision. Within 30 days after the final permit decision, an appeal of the decision to the Environmental Appeals Board (EAB) may be initiated. Decisions of the EAB are subject to judicial review.

**2. What are the Proposed Steps for Obtaining a Standardized Permit?** We propose that the RCRA standardized permit process follow the steps laid out briefly below. We discuss each of these steps in more detail in later sections of this preamble.

- C First, you, as a facility owner or operator, would advertise and conduct a meeting with your neighboring community to discuss potential operations. (see **Section III A 1: Conduct a pre-application meeting with the community.**)
- C Then you would submit to the regulatory agency a Notice of Intent to operate under the standardized permit. We are proposing that you must include with the notice a summary of the meeting with the community, certain certifications required under proposed §270.280, and the Part A information required under §270.13. (see **Section III A 2: Submit a Notice of Intent to operate under the standardized permit with appropriate supporting documents.**)
- C Within 120 days of receiving the notice of intent and accompanying information, the Director of the regulatory agency would need to make a preliminary decision to either grant or deny you coverage under the standardized permit. (see **Section IV A: How would the Regulatory Agency Prepare a Draft Standardized Permit?**)
- C If the Director anticipates granting coverage, he or she would prepare a draft standardized

permit. We are proposing that the draft standardized permit would consist of a uniform portion that applies to all facilities, and any additional terms or conditions that the Director tentatively decides to apply to your specific facility. These site-specific terms or conditions would constitute a supplemental portion of your standardized permit. (see

**Section IV A:** *How would the Regulatory Agency Prepare a Draft Standardized Permit?*)

- C The Director would provide public notice of the draft permit. Under the proposal, the public notice would initiate a 45-day public comment period; any requests for a public hearing would need to be made during the public comment period. We are proposing that the public could comment on your facility's eligibility as well as on the supplemental conditions that the Director tentatively identified. The public could also offer comments on the need for additional supplemental conditions. (see **Section V:** *Proposed Opportunities for Public Involvement in the Standardized Permit Process.*)

- C Following the public comment period (and public hearing, if any), the Director would make a final permit decision. These requirements would include responding to public comments. (see **Section IV B:** *How would the Regulatory Agency Prepare a Final Standardized Permit?* and **Section V:** *Proposed Opportunities for Public Involvement in the Standardized Permit Process.*)

- C The standardized permit for your facility typically would become effective 30 days after the final permit decision. Also, we are proposing that within 30 days after the Director makes a final decision on an EPA permit, an appeal of the decision to the Environmental Appeals Board (EAB) could be initiated. [Note: Although the final EPA permit decision is

subject to appeal to the EAB, we are proposing that the terms and conditions of the uniform portion of the standardized permit would not be subject to EAB review.] Decisions of the EAB are subject to judicial review. (see **Section V D: *How could People Appeal a Final Standardized Permit Decision Under the Proposal?***)

**3. How does the Proposed Process for Standardized Permits Compare to the Process for Individual Permits?** We (or states authorized by us) currently issue site-specific RCRA permits to operate hazardous waste management facilities on an individual basis. Each facility applies for a permit, and we (or the authorized state) write the site-specific permit. The requirements governing how we process a RCRA individual permit application are laid out in 40 CFR parts 124 and 270. In general, the individual process requires you to prepare a much more detailed permit application and the regulatory agency to conduct a more extensive review. The “back and forth” between permit applicants and regulators that normally takes place as both parties come to agreement on the completeness and accuracy of the application can impose a significant workload and delay. Under our proposed standardized permit procedures, we streamline this activity. Table 2 offers a step-by-step comparison of the individual permitting process as administered by EPA and the proposed standardized permitting process.

**Table 2: Permitting Process Comparison**

<b>Steps in the EPA Permitting Process</b>	<b>Individual Permit</b>	<b>Proposed Standardized Permit</b>
Advertise and conduct pre-application meeting ( <i>facility</i> )	U	U
Submit permit application/Notice of Intent ( <i>facility</i> )	U	U
Provide public notice at application submittal ( <i>agency</i> )	U	
Review application for completeness ( <i>agency</i> )	U	
Issue Notices of Deficiency (NODs) as necessary ( <i>agency</i> )	U	
Respond to NODs ( <i>facility</i> )	U	
Determine application is complete ( <i>agency</i> )	U	
Make draft permit decision ( <i>agency</i> )	U (no deadline)	U (within 120 days)
Prepare draft permit and statement of basis or fact sheet ( <i>agency</i> )	U	U
Establish administrative record ( <i>agency</i> )	U	U
Provide public notice of draft permit decision ( <i>agency</i> )	U	U
45 day public comment period; opportunity for public hearing	U	U
Make final permit determination; respond to comments ( <i>agency</i> )	U	U
Final permit becomes effective; deadline for appeals to EAB	U	U

The blanks represent permitting process steps that are not explicit regulatory requirements under the proposed standardized permits. However, we are proposing that during the 120-day review and processing period of the application by the permitting Agency, the Director would determine the adequacy of the permit application including completeness.

We are also proposing new procedures for modifying standardized permits. In brief, these

new procedures would allow you to make certain types of routine changes without prior approval, provided you inform both the regulatory agency and the public of the changes. For more significant changes, you would have to request approval from the regulatory agency before making the changes. The proposed modification process is discussed in detail in **Section VI: *Maintaining a Standardized Permit.***

## **E. Public Comments on this Rulemaking**

**1. How Can I Influence EPA’s Thinking on this Rule?** In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we haven’t considered, new data, information on how this rule may effect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but we request comments in particular on the items in **Section I D 3** below. Your comments will be most effective if you follow the suggestions below:

- C Explain your views as clearly as possible and why you feel that way.
- C Provide solid technical and cost data to support your views.
- C If you estimate potential costs, explain how you arrived at the estimate.
- C Tell us which parts you support, as well as those you disagree with.
- C Provide specific examples to illustrate your concerns.
- C Offer specific alternatives.
- C Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- C Make sure to submit your comments by the deadline in this notice.

C Be sure to include the name, date, and docket number with your comments.

**2. What Topics are not Appropriate for Public Comment?** The proposed provisions for standardized permits are modeled on the existing permit requirements for storing hazardous waste. While tailored specifically for standardized permits, many of the rules are restatements of the existing regulations in plain language format to make them easier to understand. We welcome comment on whether these rules are appropriate for standardized permits and whether, in restating and reorganizing the existing regulatory requirements, we inadvertently changed their meaning. Nevertheless, we are not reopening the existing regulations to public comment, except those provisions explicitly modified by this proposal.

**3. What Topics are we Specifically Requesting Public Comment on?** In addition to general comments about the scope of the standardized permit and its impacts, EPA seeks public comment on the specific regulatory provisions addressed below. We are also requesting comment on corrective action and financial assurance in **Section X: Public Comment on Corrective Action and Financial Assurance Issues**.

We are interested in the public's views on the following items:

a. Should a facility which manages some of its hazardous waste in on-site storage and treatment units and some of its hazardous waste in other types of waste management units be eligible for a standardized permit for the on-site storage and treatment activities? There are currently facilities in the RCRA hazardous waste universe that have multiple waste management units. It is not uncommon for a hazardous waste facility to have storage and treatment units, and other units such as thermal treatment units or disposal units.

Under the existing RCRA individual permitting system (see §§ 270.1(c)(4) and 270.29),



we can issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit for all units at the facility. In other words, a facility's RCRA permit under the existing permitting system does not necessarily cover every unit at the facility. We drafted the proposed standardized permit regulations so that a facility could obtain both an individual permit for any disposal or thermal treatment activities and a standardized permit for any on-site storage and treatment activities. Although it may be resource-intensive for a facility with multiple types of units to choose to go through the RCRA permitting process several times, facilities may see an advantage in obtaining a standardized permit for a portion of their operations. This is because continued maintenance of a standardized permit should be less burdensome than following the current individual permit modification procedures because of the simplified procedures. We encourage your comments and supporting data on this topic. As currently proposed, standardized permits would not relieve facilities of any substantive compliance requirements; rather, such permits would only streamline the permitting process.

b. Should we expand the applicability of the RCRA standardized permit to include facilities that treat or store waste generated off-site? Such situations could include facilities that take off-site waste from any source as well as a more limited operation where companies with more than one manufacturing location would like to centralize their management of any generated waste at one location. One of the concerns that we have heard about the management of waste generated off-site is that some facilities' owners or operators may not always have complete knowledge of the compatibility of the different waste streams that are brought onto their facilities. Therefore, management of such wastes may be more complicated and require greater attention. In some cases, uncertainty regarding the full chemical make-up of incoming wastes might pose additional risks not readily apparent to the receiving facility. This potential situation may be less

likely to occur at a company managing only its own waste generated at several locations, since the company should know what specific wastes are generated by the company and be able to manage them properly at a centralized location. We are interested in your views and supporting data on this topic. As mentioned above, the proposed standardized permits would not relieve facilities of any substantive compliance requirements, including those that are intended to ensure protection of human health and the environment.

c. We are also interested in feedback on a proposal to allow RCRA standardized permits at RCRA permitted off-site hazardous waste recycling facilities. A major goal of EPA is to eliminate regulatory disincentives to safe hazardous waste recycling. Providing regulatory relief for these types of facilities might encourage additional firms to enter the hazardous waste recycling business.

Under current RCRA rules, recycling units are not regulated. As a result, existing requirements focus on the safe storage of hazardous recyclable materials in tanks, containers and containment buildings prior to entering the recycling process. Environmental health and safety for the storage of these materials is addressed comprehensively under part 264, subparts I, J and DD, respectively, as well as part 270. Facilities must, at a minimum, manage these materials in units of good condition, respond to releases in a timely manner, inspect units at least weekly, and address concerns of ignitable, reactive and incompatible wastes.

RCRA permitted hazardous waste recycling facilities frequently must make changes to their business operations that require a permit modification from the EPA or State authorizing agency. Such changes usually do not pose a risk to human health and the environment. However, such changes can take months to approve because of the backlog in permitting work. Therefore, in order to facilitate hazardous waste recycling activities, the Agency is interested in obtaining the

views from the public on a proposal that would allow RCRA permitted hazardous waste recycling facilities to follow the modification process that is described in **Section VI: *Maintaining a standardized Permit.***

d. We are also asking for comment on additional opportunities within the framework of the standardized permit, to reduce the burden and cost of the permitting process for facilities, while still maintaining the protectiveness afforded by the RCRA standardized permit process.

Specifically, we are interested in whether we should look into the feasibility of developing a “fill-in-the-blank” type standard format for each type of covered unit that facilities could then use to prepare required “Part B” information that would be required to be retained at the facility. This fill-in-the-blank type standard format could be offered to facilities as guidance to further reduce the permitting burden.

e. Throughout the preamble we request comment on various topics. Some of the sections that we are seeking comments on are:

1. **Section I C 3:** What are the anticipated advantages and disadvantages of a standardized permit?
2. **Section IV A 3:** Is 120 days an appropriate time frame for making a draft permit decision? Should we allow a one time extension to the 120 day requirement?
- 3.. **Section IV B:** Is it appropriate to apply the current provisions for final issuance of an individual permit to a process for issuing standardized permits?
4. **Section VI B:** Are the categories for determining the significance of the permit change appropriate?
5. **Section VII C 5:** Is an exemption from security provisions appropriate for facilities

operating under standardized permit?

6. **Section VII C 9:** Should we retain the floodplain waste removal waiver in the standardized permit?

7. **Section VII G 4:** What standard conditions might be used for corrective action requirements under a standardized permit?

8. **Section VII H:** What policy and procedure should be followed in the event that a facility cannot submit a closure plan 180 days prior to last receiving the last volume of waste? Should we drop the closure plan requirement?

9. **Section VII H 1:** What other options should be available to facilities that cannot clean close?

10. **Section VII H 3:** Is an 180 day closure time period appropriate and under what circumstances should it be extended?

11. **Section VII I 4:** What information is available that compares the closure cost estimate with the actual cost incurred performing closure?

12. **Section VII I 6:** What information is most crucial for estimating cost of closure of an eligible unit?

13. **Section VII I 13:** Do States currently assume responsibility for facility compliance and would they obtain standardized permits?

14. **Section VII K:** Should underground and in-ground tank systems be excluded from standardized permits?

15. **Section IX C 1:** Are there significant benefits of a compliance audit and under what conditions would such audits need to be performed by an independent third party?

16. **Section IX C 2:** Should a waste analysis plan be submitted? Under what circumstances?
17. **Section X A 1:** For all types of permits, should facilities be able to satisfy RCRA correction action requirements by conducting cleanup under an alternative State program? Under what circumstances?
18. **Section X A 2:** What methods should EPA and the authorized States use to address the alternate authority cleanup provisions in RCRA permits?
19. **Section X A 3:** How would EPA or the authorized State determine that cleanups conducted under an alternate cleanup program would satisfy corrective action requirements?
20. **Section X B:** Should pure captive insurance be treated differently than third party liability?
21. **Section XII A 1 b:** What are the potential benefits of permit streamlining?

## **F. What Law Authorizes This Proposed Rule?**

We are proposing these regulations under the authority of sections 1003, 2002(a), 3004, 3005, 3006 and 3010 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6902, 6912(a), 6924-6926, and 6930.

## **II. Conforming Amendments to General Permit Process**

### **A. What Changes would we make to 40 CFR part 124 Subpart A – General Program Requirements?**

The General Program Requirements (Subpart A) in part 124 apply to many of our

permitting programs, not just to RCRA Permits. Consequently, we could not rewrite all of this subpart according to plain language guidelines. We are proposing, however, to amend certain sections to accommodate RCRA standardized permit procedures. We refer to these types of amendments as conforming changes. The proposed standardized permit procedures themselves would be in a separate subpart, which we discuss later.

The conforming changes we propose to the General Program Requirements would ensure that we have fully incorporated the standardized permit into the existing regulations. For example, we are proposing changes to § 124.1 *Purpose and Scope* and § 124.2 *Definitions* to include references to the RCRA standardized permit.

We are also proposing to amend §124.5(c) to have the standardized permit procedures apply in circumstances where an individual permit is being “revoked and reissued.” This change would allow you to convert from an individual permit (if you already have one) to a standardized permit. We are also proposing amendments to 40 CFR 270.41(b) to add conversion to a standardized permit as a cause for revocation and reissuance.

## **B. How would the RCRA Expanded Public Participation Requirements Change?**

The current RCRA expanded public participation requirements are in 40 CFR part 124 subpart B- Specific Procedures Applicable to RCRA Permits (these are the procedures specific to the RCRA program that apply in addition to the public participation elements of the General Program Requirements in subpart A). We propose conforming changes in both §§124.31 and 124.32 governing pre-application meeting and notice requirements and public notice requirements at the application stage, respectively.<sup>1</sup> The proposed amendments clarify the applicability of the

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<sup>1</sup>Although we are proposing the conforming changes necessary to accommodate the standardized permit procedures, we are not rewriting all of the expanded public participation

requirements in those sections to the standardized permit (in brief, the pre-application requirements apply under the proposal, but the public notice at application does not since we are proposing to incorporate other notice requirements into proposed § 124.207).

We are not proposing any changes to § 124.33 *Information repository* (or to existing § 270.30(m) *Information repository*). Under the proposal, the Director of a regulatory agency could require you to establish and maintain an information repository whether you are applying for an individual permit or a standardized permit. Since we are proposing that anyone seeking standardized permits must certify that the information being maintained onsite is readily available to both the regulatory agency and the public (see proposed § 270.280), we anticipate the Director generally would not need to invoke the information repository requirement. We acknowledge, however, that there may be situations where a community has a special need for access to information, and so are not precluding the use of the information repository requirement in this proposed rule.

Since the waste management activities at facilities eligible for the proposed standardized permit are relatively less controversial than other types of management activities, we anticipate that people in nearby communities would generally not object to going to a facility to review information. However, if it is impractical to go to the facility, people could ask the Director to require a separate information repository. The way the requirement is currently worded (see § existing 124.33(d)), you would get a “first choice” at selecting a location, although the Director would have the authority to select an alternate location. According to § 124.33(d), if the Director found the site unsuitable for the purposes and persons who need the repository, then the Director

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requirements into plain language during this rule development effort.

could specify a more appropriate site, such as the local library.

### **C. Where would I Find the Procedures Governing RCRA Standardized Permits?**

We are proposing a new subpart G to 40 CFR part 124 that would contain the procedural requirements for the RCRA standardized permit. Although existing subpart B is reserved for specific procedures applicable to RCRA permits, there are an insufficient number of available sections in that subpart to accommodate all of the standardized permit requirements. We are proposing to leave the RCRA expanded public involvement requirements in subpart B, and establish the RCRA standardized permit procedures in subpart G, starting with § 124.200. Proposed Subpart G is organized into several subdivisions shown in Table 3.

**Table 3: Subpart G Organization**

<b>CENTERED HEADINGS</b>	<b>SECTION NUMBERS</b>
General Information about Standardized Permits	§§ 124.200 - 124.201
Applying for a Standardized Permit	§§ 124.202 - 124.203
Issuing a Standardized Permit	§§ 124.204 - 124.206
Opportunities for Public Involvement in the Standardized Permit Process	§§ 124.207 - 124.210
Maintaining a Standardized Permit	§§ 124.211 - 124.213

## **III. Applying for a Standardized Permit**

### **A. How would I apply for a Standardized Permit?**

We are proposing that you must follow the applicable requirements in 40 CFR part 124 subparts A, B, and G, as well as the requirements in 40 CFR part 270 subpart I. The first activity you would need to do is conduct a pre-application meeting with your neighboring community (see



§ 124.31). After you hold the meeting, we are proposing that you would submit a notice of intent to operate under the standardized permit, along with a summary of the meeting and the certifications and supporting documents we require under § 270.275, to the Director of the appropriate regulatory agency. In the remainder of this section we provide additional information on the proposal for a pre-application meeting and the Notice of Intent.

**1. Conduct a pre-application meeting with the community.** We continue to be firmly committed to public involvement in the permitting process. As mentioned in **Section II B: *How would the RCRA Public Participation Requirements Change?***, we are proposing to apply the pre-application meeting requirement to owners or operators of facilities seeking coverage under a RCRA standardized permit. If we apply the requirements of § 124.31 to the standardized permit process, you as the facility owner or operator would be obligated to advertise and host a meeting with your neighboring community before submitting your Part B application. This meeting is intended as an important first step in establishing good relations between you and the community.

As we said in the preamble for the RCRA Expanded Public Participation Final Rule (see 60 FR 63422-63423, December 11, 1995), we do not expect such a meeting to be a forum for examining technical aspects of your facility operations in extensive detail. Instead, the meeting should provide an open, flexible, and informal occasion for you and the public to share ideas, educate each other, and start building the framework for a solid working relationship. Although we did not prescribe required discussion topics for a pre-application meeting in the 1995 final rule, we encourage you to address, at the level of detail that is practical at the time of the meeting, such topics as: the type of facility, the location, the general processes involved, the types of wastes generated and managed, and implementation of waste minimization and pollution control measures.

The discussions could also include such topics as planned procedures and equipment for preventing or responding to accidents or releases. Of course, the public retains the opportunity to submit comments during the proposed formal public comment period as well.

We would like to reaffirm our commitment to the policies we expressed in the RCRA Public Participation Manual (EPA530-R-96-007, September 1996, available from the RCRA Hotline or at <http://www.epa.gov/epaoswer/hazwaste/permit/pubpart/manual.htm>) for promoting successful and equitable public involvement in RCRA permitting activities. We encourage facilities, communities, and permitting agencies to refer to that Manual when planning public involvement activities. The Manual emphasizes the need to tailor activities to the needs of the situation at hand. For example, if the community around a facility includes people who do not speak English as their primary language, we encourage both facilities and permitting agencies to provide multilingual notices.

**2. Submit a Notice of Intent to operate under the standardized permit along with appropriate supporting documents.** If you want to operate under a standardized permit, we are proposing that you must let the regulatory agency know of your intent to do so. We are proposing in §124.202 to require owners or operators of facilities seeking coverage under a RCRA standardized permit to submit a “notice of intent to operate under the standardized permit.” This is consistent with the process and terminology currently used for NPDES general permits.

We are also proposing you send in with your notice of intent several supporting documents: the certifications required under proposed §§270.275 (which include the Part A information, and pre-application meeting summary with ancillary materials) and 270.280 (which include the required certifications and audit report). Section 270.280 would require you to certify that your

facility meets the performance standards and waste management unit design requirements of proposed Part 267. Section 124.31 would require you to submit a summary of the pre-application meeting where you discussed with the community your planned waste management activities. The RCRA Part A permit information includes the types and volumes of hazardous waste that you will manage and the types of units that you will use. As discussed later, we anticipate that these materials should provide sufficient information for the Director to make a draft permit decision.

We are proposing that you submit with your Notice of Intent a compliance certification as described in § 270.280. These proposed regulations governing the compliance certification would require you either to (1) certify compliance with part 267 or, (2) if you determine that your facility is not in compliance, provide a description of what aspects of your operations are not in compliance with the part 267 regulations (specifying which regulations) and provide a schedule indicating when your facility will achieve compliance with RCRA regulations. As required by current regulations, the schedule would be subject to approval by the permitting authority and the permitting authority would not make a final permit determination until after you have achieved compliance.

Under the proposal, you would have to conduct an internal audit to complete the compliance certification. We propose that this audit would be a systematic, documented, and objective review of your operations and practices related to meeting environmental requirements to assess the compliance status prior to submitting the Notice of Intent. You would need to include the audit results with the compliance certification when you submit the certification to the regulatory agency as a supporting document to your Notice of Intent.

## **B. How would I Switch from an Individual Permit to a Standardized Permit?**

We are proposing that you could request the Director of the regulatory agency to revoke

your individual permit and reissue you a standardized permit. We anticipate that some of you who currently operate under an individual permit may wish to convert to the standardized permit, once regulations to establish such permits are promulgated. We believe there would be advantages to switching to the standardized permit. For example, the proposed technical requirements for the standardized permit (see part 267) would impose significantly fewer reporting requirements than part 264 (e.g. no Part B application submittal required at initial permit stage or for permit renewal), which in turn would reduce your paperwork burden. Also, under today's proposal, you would be able to take advantage of the proposed streamlined modification procedures for any future changes to your facility.

We are proposing that you could initiate the conversion at any point. If there is a substantial amount of time remaining in your permit term, you could initiate the conversion by requesting to have your individual permit revoked and reissued as a standardized permit. We propose this provision in § 124.203, which refers to the procedures in § 124.5 governing revocation and reissuance of permits. Under existing regulations (§ 124.5(a)), any interested person, including the permittee, can request the regulatory agency to revoke and reissue a permit, as long as the reasons are specified in § 270.41. We are proposing to amend the causes for revocation and reissuance in § 270.41(b) to add conversion from an individual permit to the standardized permit. Once a permittee submits this request, we propose applying the procedures for RCRA standardized permits in 40 CFR part 124 subpart G. If, on the other hand, you are nearing the end of your permit term, you could convert simply by deciding to pursue your permit renewal as a standardized permit rather than as an individual permit (see **Section VIII B 4: Permit reapplication**).

## **IV. Issuing a Standardized Permit**

### **A. How would the Regulatory Agency Prepare a Draft Standardized Permit?**

We are proposing that you, as the Director of a regulatory agency, would have to follow three steps to prepare a draft standardized permit<sup>2</sup>. First, you would review the incoming Notice of Intent and supporting information and determine whether the facility is eligible for the standardized permit. Second, you would tentatively decide whether to grant or deny coverage under the standardized permit. We are proposing that, if you decide to grant coverage, you would then propose appropriate terms and conditions, if any, to include in the supplemental portion of the permit. Finally, you would prepare your draft permit decision within 120 days after receiving the notice of intent and supporting information. We propose in § 124.204(c) that your tentative determination either to grant coverage under the standardized permit, including any tentatively identified facility-specific conditions in a supplemental portion, or to deny coverage under the standardized permit, would constitute a draft permit decision. Of course, you would not have to wait until the end of the 120 days to make your draft permit decision, and could provide notice of your decision earlier. You would need to follow many of the proposed requirements in part 124 subpart A in processing the standardized permit application and preparing your draft permit decision. To help you determine which requirements apply, we propose in § 124.204(d), the applicability of relevant subpart A sections in the context of the RCRA standardized permit, as it would be administered by EPA.

In this section, we concentrate our discussion on three areas of the proposal: drafting terms

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<sup>2</sup> We are proposing that you would follow the standardized permit procedures if you are issuing an EPA standardized permit; you would follow equivalent state permitting procedures if you are issuing a state permit in a state authorized to issue standardized permits.

and conditions for the supplemental portion, denying coverage under the standardized permit, and preparing your draft permit decision in 120 days.

**1. Drafting terms and conditions for the supplemental portion.** If you, as the Director, decide to grant coverage under the standardized permit, we are proposing that you must tentatively identify appropriate facility-specific conditions, if any, to impose in the supplemental portion of the standardized permit, and include those conditions as part of the draft permit. (Note: If a need for additional facility-specific conditions arises after you make a permit determination, or any of the facility-specific conditions you initially included need to be amended at a later time, you could modify the permit at that time, in accordance with existing provisions in § 270.41.) These proposed facility-specific conditions would go beyond the nationwide conditions in the uniform portion of the standardized permit. We propose that the site-specific conditions that you impose would be those that, in your discretion, are necessary for corrective action purposes or otherwise to ensure protection of human health and the environment. Your authority to impose permit conditions necessary for corrective action purposes comes from RCRA section 3004(u) and (v) and EPA regulations at 40 CFR §267.101. Your authority (and your obligation) to impose permit conditions that ensure protection of human health and the environment (including conditions requiring cleanup of any contamination not subject to 3004(u) and (v)) comes from the "omnibus" provision of RCRA section 3005(c)(3) and EPA regulations at 40 CFR §270.32(b)(2).

We anticipate that in certain cases communities may raise the need for site-specific conditions, or actually propose such conditions, during the proposed pre-application meeting. You would see the community's concerns or proposed conditions in the meeting summary that the facility owner or operator submits with their notice of intent. For example, the community may express concern that certain waste management units are too close to the facility's boundaries. To

address the concern, you might specify how far back from the boundaries to place the units. As another example, the community might have concerns or pertinent information about the facility's location in relation to local flood patterns, especially if the facility is located in a 100-year floodplain area. (Under the §267.18 locations standards, facilities can locate in the 100-year floodplain only if the waste management units are properly designed, constructed and operated to prevent damage during flooding events.) You may need to address this situation by imposing site-specific conditions similar to what would be considered under the current individual permit process.

Of course, under the proposal, a facility owner or operator could voluntarily suggest additional permit requirements in response to community concerns or to address corrective action. We are proposing that a facility owner or operator could include a statement with their Notice of Intent specifying additional conditions they would like you to attach to their standardized permit.

If you found that some of the general design or management standards of 40 CFR Part 267 are not adequate for a particular facility, we are proposing that you could determine that more stringent standards would be necessary. We do not anticipate that more stringent standards would be necessary in most standardized situations. However, if you determine more stringent standards are necessary for a particular facility, then you would add conditions in the supplemental portion of the standardized permit.

We are proposing that you could determine, in some situations, that there is no need for additional site-specific conditions to satisfy regulatory requirements or to ensure protection of human health and the environment, and that a facility could operate under the terms of the uniform portion of the permit alone. In these situations, you would simply not include any conditions, beyond those in the uniform portion, as part of the draft permit. This scenario is certainly

plausible, since existing regulatory controls for the types of units eligible for the proposed standardized permit (e.g., tanks, containers) generally do not need much site-specific variation. Where a site requires corrective action, however, the corrective action requirements, which are generally not uniform among sites, could drive the need for supplemental permit conditions.

**2. Denying coverage under the standardized permit.** We are proposing that you, as the Director, could decide to tentatively deny coverage under the standardized permit -- for example, if a facility owner or operator failed to submit all the information required under §270.275, or if the facility does not meet the eligibility requirements for a standardized permit (e.g., the facility's activities are outside the scope of the standardized permit). We also propose that you could consider the facility's compliance history, in situations where the facility is operating under RCRA interim status or already has an individual permit and is choosing to convert to the standardized permit. Given the self-implementing nature of the proposed requirements in the uniform portion of the standardized permit, we believe that it is important that the facility demonstrate its ability to adhere to the regulations. If a facility has a demonstrated history of not complying with applicable requirements, it may not be a viable candidate for a standardized permit. We welcome your comments on this issue.

We are also proposing that you may decide not to allow a facility to operate under the standardized permit where such a permit cannot ensure protection of human health and the environment, even if additional site-specific conditions were imposed. We are proposing that facilities that you determine are ineligible for the standardized permit would, of course, still have the option of applying for an individual permit.

**3. Preparing your draft permit decision in 120 days.** Under proposed §124.204(c), you,



as the Director, would need to make a draft permit decision within 120 days of receiving a notice of intent and supporting documents from the facility owner or operator. The proposed 120-day time frame for issuing the draft permit is a new concept in the RCRA program. Although the existing process for RCRA individual permits requires EPA to determine the completeness of an application within a set time frame (60 days), it does not impose any time limit for issuing a draft permit. To ensure that the standardized permitting process does, in fact, streamline the administrative process and shorten the time required to obtain the permit, we believe it is appropriate to propose a time limit for preparing standardized permits. On the other hand, it is important to allow a sufficient period of time for you to review the supporting documents for information that may influence your decision on a facility's eligibility for the standardized permit or prompt you to develop facility-specific conditions to include in a supplemental portion. We suggest that a limit of 120 days would still provide a reasonable amount of time for you to review the supporting documents to (1) determine that the facility is in compliance with applicable regulations (in the case of existing facilities); (2) propose conditions that might be necessary for corrective action purposes, or to otherwise ensure protection of public health and the environment; or (3) propose conditions to address community concerns raised in the early public meeting. This time would also afford you the opportunity to consult with the community or the facility, if necessary to expand on the information submitted with the Notice of Intent.

We request your comments on whether 120 days is an appropriate time frame for a draft permit decision, or whether a longer or shorter time frame would be more suitable. We anticipate that the proposed 120-day period leading up to the draft permit decision would provide sufficient time for you, as the Director, to decide whether to grant or deny coverage under the standardized permit. We would also like comments on whether we should allow for a one-time extension to the

time limit, and what an appropriate amount of time for such an extension might be. For example, if state and EPA regional permitting authorities anticipate that they might continue to have joint permitting issues under the standardized permit scenario (such as those that currently exist under the individual permit scenario), how much additional time would be sufficient to address joint permitting or other types of permitting issues? Would a one-time, 90-day extension period be an appropriate amount of time to address concerns? Is some other time period more appropriate? We would also like comments on whether to suspend the 120 day “clock” if site-specific conditions require a comprehensive site visit and follow up by the permitting authority. Under this approach the review “clock” would be restarted after the site-specific issues were resolved.

**B. How would the Regulatory Agency Prepare a Final Standardized Permit?**

We are proposing that, after the close of the public comment period, you, as the Director, would make a final determination on your draft permit decision. In other words, you would decide whether to grant or deny coverage to a facility to operate under the standardized permit. In arriving at your decision you would need to consider all significant comments on the draft decision that were raised during the public comment period or the public hearing, if one took place. If you decide to grant coverage, you would, as part of your final permit decision, make a final determination on the facility’s eligibility, and on the terms and conditions to include in the supplemental portion, if any. As we discuss below, we propose applying the current procedures for final issuance of an individual permit, codified in § 124.15, to the standardized permit as well.

Once you issue a draft standardized permit, we are proposing that you would follow the same procedures for finalizing the permit that you use to finalize a draft individual permit for a facility -- i.e., you would generally follow the procedures of 40 CFR part 124, subpart A, with the exception of certain steps as modified in subpart G.

We propose in § 124.205 which sections of part 124 subpart A would apply to the preparation of your final permit decisions, in the context of a RCRA standardized permit process, as administered by EPA. These proposed procedures include, among other things, requirements for responding to comments, establishing an administrative record, and the issuance and effective date of the final permit. For example, by applying the provisions in § 124.15 *Issuance and effective date of the permit*, we are proposing that your final permit decision would become effective 30 days after you announce it, with three possible exceptions: (1) you specify a later date in your notice of final determination; (2) someone requests an appeal under § 124.19 *Appeal of RCRA, UIC, and PSD Permits* (§ 124.19 is referenced by § 124.210 *May I, as an interested party in the permit process, appeal a final standardized permit?*); or, (3) you received no comments requesting a change in the terms and conditions in the supplemental portion. In this third situation, the permit would become effective immediately upon issuance of your notice. We welcome comments on whether it is appropriate to apply the current provisions of § 124.15 for final issuance of an individual permit to the process for issuing standardized permits. However, we are not reopening for comment the provisions of § 124.15 or the Part 124 permit procedures more generally.

### **C. In What Situations Could Facility Owners or Operators Be Required to Apply for an Individual Permit?**

We are proposing to provide the flexibility for you, as the Director of a permitting agency, to require a facility owner or operator to obtain an individual permit (see § 124.206). We are also proposing to allow any interested person to petition you to require a facility to get an individual permit. We do not anticipate that you would invoke this provision very often. There are at least

two reasons for such a situation. The first is if the facility is not eligible for the standardized permit. The second is if the facility has a poor compliance record while operating under the standardized permit. Given the self-implementing nature of the technical requirements applicable to the facility, we believe it will be important that the facility demonstrate its ability to adhere to the regulations. If a facility has consistently failed to fulfill this obligation in the past, then it likely warrants the more in-depth review that occurs under the individual permit scenario. We are proposing that if you decide to invoke this provision, you would have to provide notice to the facility of your decision, including a description of the reasons that led up to your decision. We are interested in your comments on this topic.

## **V. Proposed Opportunities for Public Involvement in the Standardized Permit Process**

### **A. What are the Proposed Requirements for Public Notices?**

We propose in § 124.207 that you (the Director) would issue a public notice announcing your draft permit decision, and place in a location accessible to the community near the facility or at your office a copy of: the draft permit denial or the draft standardized permit (including both the uniform portion and the supplemental portion, if any); the statement of basis or fact sheet; the facility's notice of intent to operate under the standardized permit; and the supporting documents. We are limiting these proposed requirements to the information that the facility owner or operator actually submits to you, since we are proposing in § 270.280 that you would certify that the information that supports the Notice of Intent and the certifications (e.g., all the technical design information for the units) would be available for review at the facility itself. We request comments on whether the public notice requirements are sufficient.

The public notice requirements we are proposing in § 124.207 for announcing your draft

permit decision for RCRA standardized permits mirror the public notice requirements for individual RCRA permits that are specified in § 124.10(c). These current requirements specify how you must develop and maintain facility mailing lists and to whom you must send public notices. We are likewise proposing to mirror the methods for distributing public notices. For example, under proposed §124.207, you would need to publish public notices in a local newspaper and broadcast them over local radio stations.

Section 124.207(c) lays out the proposed content for the notice, such as contact people at both the facility and the permitting agency, the location where you put the draft standardized permit and the supporting information, a brief description of the facility and its operations (including an address or a map showing the facility's location), and an address people can write to join the facility's mailing list. The notice would also provide a mailing address to which people may direct comments, information, opinions and inquiries. We are also proposing that you would provide public notice of your final permit determination according to the requirements in § 124.207. We believe the information in this notice will provide the public an adequate opportunity to stay involved in the standardized permitting process beyond the initial meeting with the facility owners or operators. We are interested in your comments on the appropriateness of this proposed public notice procedure which is modeled after the existing individual RCRA permit public notice procedure.

#### **B. What are the Proposed Opportunities for Public Comments and Hearings?**

We are proposing that the notice described in §124.207 would initiate a 45-day public comment period (see proposed § 124.208). Anyone who chooses to comment on your draft standardized permit decision would need to submit their comments to you in writing. We are proposing a 45 days because it parallels the existing public comment period on a draft individual

RCRA permit.

During the public comment period, we are proposing that anyone could ask you to hold a public hearing. They would need to submit their request for a hearing to you in writing and would state the nature of the issues they want to address in the hearing. You could hold a public hearing whenever you find, on the basis of requests, a significant degree of public interest in your draft permit decision. You could also hold a public hearing at your discretion, whenever, for instance, such a hearing might clarify one or more issues involved in your permit decision. However, as is the case for RCRA individual permits, we are proposing that you must hold a public hearing whenever you receive written notice of opposition to a standardized permit and a request for a hearing within the public comment period. The hearing should be held at a location that is convenient to the community, for example, at a town hall or school auditorium. As is the case in the individual permitting process, you would need to automatically extend the public comment period to the close of any public hearing you schedule.

We also propose that the requirements for providing public notice of the hearing, and governing the manner in which the hearing will be conducted, be the same as those followed by the individual RCRA permitting process (see §§ 124.10(c), 124.12(b), (c), and (d)). We propose in §124.208(d) that you provide the public notice at least 30 days before the hearing. This requirement is consistent with the timing requirements in 124.10(b) for individual permits. Under the proposal, you could give notice of the hearing at the same time you provide public notice of your draft permit decision, and you could combine the two notices.

During the public comment period, we are proposing that interested parties could provide comments on your draft permit decision, including the facility's eligibility for the standardized permit. For example, they could ask you to reconsider a facility's eligibility to operate under the

standardized permit. They could also comment on any site-specific conditions, either those you proposed in a draft supplemental portion, or those the commenters would like you to impose when you make your final permit decision. We discuss examples of site-specific conditions in **Section IV A 1: *Drafting terms and conditions for the supplemental portion.*** We are also proposing that people could also comment on your decision to deny the permit because sufficient conditions could not be imposed.

Although we are proposing the terms and conditions of the uniform portion on a national basis in Part 267 (see **Section VII: *Proposed Part 267 Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit***), which makes them subject to public comment and challenge as part of this rulemaking, we are also proposing that the public may comment on the adequacy of those terms and conditions in the context of a particular facility. In other words, if people believe there are site-specific factors that impact the effectiveness of those national standards in protecting human health and the environment, they can submit comments to this effect. In this situation, the terms of the uniform portion would still apply to the facility, but you could impose additional conditions in the supplemental portion to ensure that the facility indeed operates in a manner that is protective of human health and the environment. We request your comments on the adequacy of the proposed opportunities for public comments and hearings, and whether they should be strengthened or even relaxed (given that the management units potentially eligible for the standardized permits are more straightforward).

### **C. What are the Proposed Requirements for Responding to Comments?**

We are proposing that, at the time you make your final decision on the draft permit, you must also provide a response to comments you received during the public comment period. We

propose in §124.209 that the requirements for the response to comments under the standardized permit process be consistent with the requirements under the individual permit process. That is, your response would (1) specify any additional site-specific conditions that you changed in the final permit, and the reasons for the change, and (2) describe and respond to all significant comments on the facility's ability to meet the general requirements, and on any additional conditions necessary to protect human health and the environment. You would make your response to comments available to the public. We are also proposing that you would include in the administrative record for your final permit decision any documents cited in your response to comments. If new points are raised or new material supplied during the public comment period, you could document your response to those matters by adding new materials to the administrative record.

We are also proposing to allow you to request additional information from the facility (i.e., information beyond that submitted with their notice of intent and supporting documents). We are including this provision to address situations that may arise when you need additional information to adequately respond to the comments, or to make decisions about additional conditions you may need to add to the standardized permit for a particular facility. This provision parallels the authority we have under 40 CFR 270.10(k). We are requesting your comments on this topic.

#### **D. How could People Appeal a Final Standardized Permit Decision?**

We propose in §124.210 to allow interested parties to appeal your final EPA permit decision to EPA's Environmental Appeals Board (EAB) within 30 days. Anyone who filed comments on the draft permit decision, either in writing or orally at the public hearing, if one took place, could initiate an appeal. We are proposing that the procedures for appealing permit decisions in §124.19 also apply to standardized permits. A petition to the EAB is currently a



prerequisite to seeking judicial review of a final permit determination. Appeals of RCRA permit actions are often resolved at the administrative appeal step, and do not progress to judicial appeal. We believe the administrative appeal is important to propose as part of the RCRA standardized permitting procedures.

Under today's proposal, people could appeal the standardized permit, including any terms and conditions in the supplemental portion, only after you make your final permit decision. They could also appeal your decision about the facility's eligibility for the standardized permit at this time (e.g., someone may challenge that the unit is not a tank but a thermal treatment unit, and thus not eligible for coverage under the proposed standardized permit). People could not, however, appeal the terms and conditions of the uniform portion. As we point out in **Section V B: *What are the Proposed Opportunities for Public Comments and Hearings?***, we are proposing to promulgate the uniform portion of the permit as regulation, which would make it subject to public notice and comment procedures that are an integral component of our rule-making process. Once the uniform portion becomes a final rule, it could not be challenged after 90 days under RCRA section 7006(a)(1).

## **VI. Maintaining a Standardized Permit**

### **A. What Types of Changes could Owners or Operators Make?**

Regardless of what type of permit you (the owner or operator) may have, you will likely need to modify your permit over time to reflect changes in your facility's design or operations. For example, you may add new units or start managing a different waste stream, or you may need to reflect administrative changes, like name changes or changes in ownership.

We believe many changes to standardized permits, as proposed, can occur without

regulatory oversight or with greatly reduced regulatory oversight and processing time. We also recognize that not all potential changes are of the same magnitude, and thus not all potential changes need to follow one prescribed set of procedures. Consequently, we propose categorizing potential modifications to your standardized permit into two categories: routine changes and significant changes.

#### **B. What are the Proposed Definitions of Routine and Significant Changes?**

We are proposing to define *routine changes* as any changes that qualify as class 1 or 2 permit modifications under 40 CFR 270.42 Appendix I (commonly referred to as the permit modification table). These types of changes typically include things such as: administrative and informational changes, changes in ownership or operational control, changes to allow less than 25% increase in capacity of a hazardous waste management unit, and changes to allow you to store different wastes at your facility as long as they undergo similar waste management processes.

We are proposing to define *significant changes* as: (1) any changes that qualify as class 3 permit modifications under 40 CFR 270.42 Appendix I, (2) any changes that are not specifically identified in Appendix I, or (3) any changes that amend terms or conditions in the supplemental portion of your standardized permit. These types of changes typically include such things as a greater than 25% increase in a unit's capacity, as well as managing wastes that you did not previously identify and which require different management processes than those you currently use.

We decided to propose categorizing modifications in this way because it is consistent with the approach we used in the existing RCRA pre-application meeting requirements in § 124.31(a). In applying those requirements, we are proposing that the pre-application meeting would only apply to renewal applications in cases where the facility owner or operator was proposing a significant change in facility operations. Additionally, in § 124.31(a) we said that for the purposes

of that section, “a ‘significant change’ is any change that would qualify as a class 3 permit modification under 40 CFR 270.42.”

We would like people to comment on whether these categories are appropriate, and whether the procedures we describe in the following two sections correctly reflect the appropriate level of regulatory oversight necessary for these levels of changes. Of particular interest to us is whether changes in ownership or operational control should be included with routine changes. Is there a need for the permitting authority to evaluate the impacts of owner or operator changes on existing permits prior to such changes being made (as currently provided for in §§ 270.40 and 270.42), to confirm that the new owner(s) or operator(s) are legitimate and financially capable of complying with the facility's closure and post-closure care responsibilities and corrective action obligations, if any?

### **C. What are the Proposed Standardized Permit Procedures for Making Routine Changes?**

We propose in § 124.212 to allow you to make routine changes without prior approval by the regulatory agency. If the changes amend any of the information you submitted under proposed § 270.275, however, you would need to submit the revised information to the Director before you make the change. For example, § 270.275(a) would require you to provide the Part A information to the Director. The Part A form includes information such as your name and address. If you change ownership or operational control of your facility, this would be a routine change (it is a type of class 1 modification in § 270.42 Appendix I) which you can make without obtaining approval from the Director. However, the Director would need to know of these types of changes (for purposes including accountability and liability), and so it would be important for the Director to have the revised information. In cases where you have to provide notice to the Director, you would also provide notice of the changes to the facility mailing list and to appropriate units of

state and local government before putting the changes in place.

We are not proposing to require you to provide advance notice of all routine changes. Some types of modifications that qualify as routine may not amend information submitted under § 270.275. For example, some changes could be within the scope of the uniform portion of your standardized permit (e.g., a less than 25% capacity increase in a unit). Under the proposed standardized permit scheme, you would not provide detailed information about the technical aspects of your operations. You would instead certify that you meet the technical standards in part 267. Since you would not submit the detailed information as part of the permit application, it would not make sense to submit modifications to that information. In other words, the information would not be part of a permit application and would not result in any facility-specific permit conditions that the Director would need to modify. We are proposing that, regardless of what routine changes you make, you would still need to operate your facility in accordance with the proposed design and management standards of part 267, and you would still be bound by the certifications submitted with the notice of intent to operate under the standardized permit. We request your comments on these proposed procedures.

#### **D. What are the Proposed Standardized Permit Procedures for Making Significant Changes?**

If you want to make significant changes to your facility, you would need to follow a set of procedures we are proposing in § 124.213 that closely resemble the initial standardized permitting process. Under the proposed §124.213 procedures, you would initiate the process for making significant changes by publishing a notice announcing a public meeting on your permit modification request. Since the site-specific conditions by their very nature relate directly to your facility and

your neighboring community, and could be the direct result of community input, we believe it is important to make sure the community is aware of potential changes to those conditions.

Therefore, we propose requiring you to advertise and conduct a meeting with the public about the proposed modifications. This meeting would be similar to the pre-application meeting you must conduct as part of the initial standardized permitting process.<sup>3</sup> For example, as proposed, you would hold both meetings *prior* to submitting the notice of intent either to operate under the standardized permit or to modify the standardized permit. As in the case of the initial meeting, you would provide notice of the meeting about the proposed changes at least 30 days beforehand and in the same manner (i.e., as required by §124.31(d)). During the meeting, you would solicit questions from the community and inform the community of the proposed changes to your facility's hazardous waste management activities. Also, as in the case with the initial meeting, you would post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

We are proposing that, after the public meeting on the modifications you want to make, you would submit a modification request to the Director. In your request, you would describe the exact changes you want to make, identify whether they are changes to the information you submitted under 40 CFR 270.275 or to terms and conditions in the supplemental portion of your standardized permit, and you would explain why you need to make the changes. You would also include a summary of the meeting, the list of attendees, and copies of any written comments or materials people submitted at the meeting. We propose that the Director would then have 120 days to make

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<sup>3</sup> The meeting we propose here is also consistent with current class 3 modification regulations for individual permits. Those regulations include a requirement for you to conduct a public meeting as part of the modification process (see 40 CFR §270.42(c)(4)).

a tentative determination to approve or not approve your modification request.

The proposed 120-day time frame for the Director to make a tentative determination on the modification request is the same as the proposed 120-day time frame that the Director would have to make a draft decision about your initial standardized permit. We solicit comments in **Section IV A 3: *Preparing your draft permit decision in 120 days***, on the appropriateness of the 120-day time frame. If we adopt a different time frame in the initial process in response to comments on this proposal, we plan to make the same change in the modification process as well. Nevertheless, we request comments on our assumption that the modification process would require the same level of effort as the initial process.

We are proposing that, once the Director makes a tentative determination on your modification request, the remaining procedures governing the initial standardized permitting process, i.e., the procedures for providing public notice of the tentative determination, public comment, public hearings, final determination, response to comments, and appeals, would apply to the modification process as well. We request your comments on the applicability of these proposed procedures to the modification process.

#### **E. What would be the Process for Renewing Standardized Permits?**

We examined the possibility of having a standardized permit remain in effect for the entire life of a facility. The Agency's Permits Improvement Team (PIT) included this as a possible approach for streamlined permitting procedures in its recommendation for a RCRA standardized permit. However, we are bound by statute (under RCRA Section 3005(c)(3), see also § 270.50)) to limit the lifetime of a RCRA permit to a maximum of 10 years in length, and so are not proposing any new provisions to govern renewals of standardized permits.

Under current regulations (see §§ 270.11(h) and 270.30(b)), if you wish to continue an activity regulated by your permit after the expiration date of your permit you must submit a new application at least 180 days before the expiration date unless you have obtained permission for a later date. This same provision applies to you if you operate under an individual permit, and would apply if you had a standardized permit. To renew a standardized permit, you would follow the same procedures as you would to initially obtain coverage under the standardized permit (those in 40 CFR part 124 subpart G).

## **VII. Proposed Part 267 Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standardized Permit**

### **A. Overview**

This section of the preamble discusses the specific part 267 RCRA hazardous waste requirements that we propose standardized permitted facilities must meet. The specific topics that will be discussed are:

1. General Facility Standards
2. Preparedness and Prevention
3. Contingency Plans and Emergency Procedures
4. Record Keeping, Reporting, and Notifying
5. Releases from Solid Waste Management Units
6. Closure of Units
7. Financial Requirements
8. Use of Management of Containers
9. Tank Systems, and

## 10. Containment Buildings.

We are proposing to add a new part to the RCRA hazardous waste standards that specifies the general facility requirements and the unit specific standards for RCRA hazardous waste facilities operating under a standardized permit. These proposed requirements would form the basis of the “uniform” portion of the standardized permit. Specifically, during the standardized permit application process, you, as the facility owner or operator, would certify that you are meeting the performance standards and waste management unit design requirements of part 267. You would prepare specific documentation on *how* your facility is meeting the performance standards and unit-specific requirements found in part 267, and would keep this information on-site at the facility. You would not have to submit this information to the permitting agency for review and approval. Table 4 offers a comparison of the waste management standards found in part 264 (for the individual permit) and in part 267 (for the standardized permit).

We request comment on all aspects of the proposed part 267 rules. Since many of these provisions are restatements of the existing part 264 regulations in plain language format, we particularly invite comment on whether, in rewriting and reorganizing the existing part 264 requirements, we inadvertently changed their meaning. As noted previously, however, we are not reopening the existing regulations to public comment, except those provisions explicitly modified by this proposal. Nevertheless, we request comments on whether each of these existing requirements should apply (and to what extent) to units covered by standardized permits, which we consider inherently more straightforward than other types of management units.



**Table 4: Technical Standard Comparison**

	<b>Individual Permits</b>	<b>Proposed Standardized Permit</b>
<b>Applicability:</b>		
Facilities that treat, store, or dispose of hazardous waste	U	
Only for facilities that store or non-thermally treat hazardous waste on-site in tanks, containers, or containment buildings		U
<b>General Facility Standards:</b>		
EPA identification numbers	U	U
Waste analysis plans	U	U
Security	U	U
Inspection schedules	U	U
Personnel training	U	U
Preventive measures	U	U
Floodplain and seismic location standards	U	U
Construction quality assurance	U	
<b>Preparedness/Prevention:</b>		
Requirements for minimizing threats from unplanned events	U	U

	Individual Permits	Proposed Standardized Permit
<b>Contingency Plan and Emergency Procedures:</b>		
Requirements for contingency plans that describe how hazards from fire/explosion/and other releases will be minimized	U	U
<b>Manifest system, record keeping and reporting:</b>		
Requirements for keeping: manifests for wastes accepted from off-site	U	
operating records	U	U
other records	U	U
<b>Releases from Solid Waste Management Units</b>		
Requirements for ground water monitoring	U	
solid waste management unit corrective action	U	U

	Individual Permits	Proposed Standardized Permit
<b>Closure :</b>		
Requirements for facility closure including:		
closure performance standards	U	U
a closure plan	U	U However, closure plan not submitted until 6 months prior to closure
time for closure	U	U
post-closure	U	
<b>Financial Assurance</b>		
Requirements for financial assurance for closure, post-closure, and liability	U	U Except financial assurance for post-closure and non-sudden liability requirements are not applicable
<b>Management Standards for Containers</b>		
Requirements for management of containers and container storage areas, and closure	U	U
<b>Tank Systems</b>		
Requirements for design and installation of tanks, containment of releases, operating standards, inspections, and closure	U	U Except no waiver provision from secondary containment, no underground tanks allowed, and clean closure required

	Individual Permits	Proposed Standardized Permit
<b>Containment Buildings</b>		
Requirements for design and operation, and closure	U	U Except, clean closure required

We believe that the current minimum national requirements for hazardous waste management in tanks, containers, and containment buildings found in 40 CFR Part 264 are appropriate for facilities covered under the proposed standardized permit. Therefore, we are proposing to incorporate most of the part 264 standards for owners and operators of hazardous waste facilities into the proposed part 267 standards with minor changes necessary to accommodate the intent of the standardized permit. For example, we made some changes to accommodate the reduced level of interaction under the standardized permit between the permitting agency and the facility owner or operator. Other changes were made to make the part 267 standards more readable. We believe that the proposed part 267 standards provide the same baseline of protection that the part 264 standards do.

## **B. Subpart A - General**

**1. What are the purpose, scope, and applicability of this proposed part?** In § 267.1, we discuss the purpose, scope, and applicability of the part 267 regulations. The purpose of proposed part 267 would be to establish minimum national standards for facilities managing waste under a standardized permit. As discussed previously in **Section I C 4: *Who would be Eligible for a Standardized Permit?***, facilities that generate waste and then manage the waste on-site in tanks, containers, or containment buildings would be eligible for a standardized permit under today's proposal. The proposed part 267 regulations would apply to owners and operators of facilities who non-thermally treat or store waste under a standardized permit as described in § 270.67. We explain that three categories of facilities are exempt from the part 264 regulations, and the proposed part 267 regulations would include the same exemptions.

First, the existing part 261 regulations contain requirements for the identification and listing of hazardous waste and also discuss several waste streams that are not hazardous waste. Facilities that manage these exempted wastes and non-hazardous waste are not currently subject to the part 264 standards. Similarly, we are proposing that facilities managing these excluded wastes would not be subject to the proposed part 267 standards.

Second, § 264.1(f) currently provides an exemption from the part 264 regulations for facilities that manage hazardous waste if the state in which the hazardous waste management activity is occurring has a RCRA hazardous waste program authorized under part 271 of this chapter. The proposed part 267 regulations would also contain this provision.

Finally, existing § 264.1(g) requirements provide an exemption from the part 264 regulations for various facilities and individuals who manage hazardous waste, such as small quantity waste generators, certain recyclers, farmers disposing of waste pesticides, to name a few. The proposed part 267 regulations would also contain the § 264.1(g) exemption provisions.

**2. What is the proposed relationship to interim status standards?** The provisions of proposed § 267.2 discuss the relationship of the standardized permit requirements to the interim status standards. Under section 3005(e) of RCRA, owners and operators of hazardous waste treatment, storage, and disposal facilities in existence on November 19, 1980 or when they are subjected to RCRA permitting, and who submit appropriate notification and a Part A permit application have “interim status.” The proposed § 267.2 provisions are similar to those found in the current § 264.3. Under the proposed provisions, if you are currently complying with the requirements for interim status as defined in section 3005(e) of RCRA and qualifying for interim status under § 270.70, you would be required to continue to comply with the interim status standards specified in part 265 until final disposition of your standardized permit application.

**3. How would this subpart affect an imminent hazard action?** Proposed § 267.3 repeats the provisions found currently in § 264.4 concerning imminent and substantial hazards. As this proposed provision states, the permitting agency could issue enforcement orders to a facility if an imminent and substantial endangerment to human health or the environment is present, even if the facility is complying with the proposed part 267 provisions.

### **C. Subpart B - General Facilities Standards**

This section of the preamble discusses the general facility standards that we are proposing for standardized permitted facilities. These proposed general facility standards are similar to the general facility standards currently found in the 40 CFR part 264 subpart B. They describe how you would obtain an EPA identification number, and what the proposed requirements would be for waste analysis, site security, general inspection schedule, employee training, managing ignitable, reactive, or incompatible waste, and locations standards. We are requesting your comments on the appropriateness of these proposed general facility standards.

**1. Would this subpart apply to me?** Section 267.10 contains the proposed applicability language of this subpart. This section states that “this subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a part 270 subpart I standardized permit, except as provided in § 267.1(b).” We repeat this applicability language in all the proposed subparts of part 267.

**2. How would I comply with this subpart?** Proposed § 267.11 lists the steps that you would take if this subpart applies to you. Specifically, you would obtain an EPA identification number, and follow prescribed requirements for waste analysis, security, inspections, training, special waste handling, and location standards.

**3. How would I obtain an identification number?** Proposed § 267.12 repeats the requirement found currently in § 264.11 on identification numbers with the addition of who to contact for information. Permitting agencies use a facility's identification number to track the operations at the facility and to enter the facility in their hazardous waste facility data system. The existing notice requirements of § 264.12(a) and (b) are not applicable to the proposed standardized permit situation because, under this proposal, no waste would be coming onto a standardized permitted facility from any off-site sources. The existing requirements of § 264.12(c), stipulating that you notify a new owner or operator of your facility of the requirements of both this part and part 270, are included in proposed Subpart E (Record keeping, reporting, and notifications).

**4. What are the proposed waste analysis requirements?** Proposed § 267.13 discusses general waste analysis requirements and repeats most of the requirements currently found in § 264.13 except for those specific to off-site generated waste and land disposal units, which are not proposed to be eligible for standardized permits. We are not proposing to include in § 267.13 off-site waste and disposal units discussed in §§ 264.13(a)(3)(ii), (a)(4), (b)(5), (b)(7), and (c).

Under the standardized permit procedures proposed in § 270.67, you, as the facility owner or operator, would be required to develop a waste analysis plan and keep it at your facility. You can find the proposed waste analysis plan requirements in § 267.13(b). The waste analysis plan would describe sampling and analytical procedures. The purpose of the waste analysis plan would be to ensure that you possess sufficient information on the properties of the waste to be able to treat or store the waste in a safe manner. The waste analysis plan required by proposed § 267.13 (b) should be the same level of detail as the existing plan currently required by § 264.13.



You would be required to specify in the plan the level of analysis you would perform on your waste and the frequency with which you would repeat the analysis.

**5. What are the proposed the security requirements?** The facility security procedures we proposed in § 267.14 are important factors in the safe management of hazardous waste. These proposed requirements are similar to the security requirements found in current § 264.14. The provisions of § 267.14 would require you to have security procedures that prevent the unknowing entry of people and minimize the potential for the unauthorized entry of people or livestock onto the active portion of the facility. We are proposing that, during inspection of the facility, the permitting agency could review the security procedures and determine if the components of the security system are in place and in working order.

If you wish an exemption to any component of the security system, as provided under the proposed provisions in § 267.14(a) (similar to provisions of § 264.14), you would be required to prepare a written justification and keep it readily available on-site at your facility. This procedure is different from the existing § 264.14 provisions in that you would not make the demonstration to the Director, but instead self-certify that you qualify for the exemption. This self-certification is similar to the demonstration currently available to interim status facilities under §265.14. The proposed §267.14 provision contains two conditions for the exemption: (1) if unauthorized entry will not result in injury to people or livestock who might enter the facility, and (2) if such entry will not result in injury to the environment (for example, as a result of disturbing the waste or the equipment within the active portion of the facility). Because past experience shows us that these two conditions are rarely satisfied, we do not expect many of you would be able to qualify for the proposed exemption from security requirements. We invite comment on the inclusion of this proposed exemption for standardized permits. Do you believe that the exemption from security

provisions is appropriate for facilities operating under standardized permits?

**6. What are the proposed general inspection schedule requirements?** We propose requiring you to make the general inspection schedule, as well as the inspection logs or summaries, as described in proposed § 267.15, readily available at your facility. You would generally develop and follow your own written inspection schedules. You would be required to base the written inspection schedule described in proposed § 267.15 on your facility's critical processes, equipment, and structures, and on the potential for failure and the rate of deterioration processes (for example, corrosion) that may lead to failure (just as is required currently in § 264.15). We are proposing to retain minimum inspection requirements and schedules for tanks, containers, and containment buildings. You would be required to incorporate these inspection schedules into your written inspection schedules. You would document all repairs and responses to problems noted during inspections in your inspection log and keep the documentation with the inspection schedule. Several of the regulatory citations currently in § 264.15(b)(4) are not appropriate because they refer to units that are not eligible for the proposed standardized permit (for example, thermal treatment units and land disposal units); therefore, we are not including these citations in the proposed § 267.15(b)(3) requirements.

**7. What training would my employees be required to have?** The purpose of the training requirement is to reduce the potential for mistakes that might threaten human health or the environment by ensuring that facility personnel are knowledgeable in the areas to which they are assigned. The proposed standards found in § 267.16 are essentially the same as the training standards currently in § 264.16, and include requirements that specify what training your personnel would be required to have and when they need to receive training to do their jobs. You would be

required to keep a description of the training program and individual personnel training logs with the other required records at your facility.

**8. What are the proposed requirements for managing ignitable, reactive, or incompatible waste?** We propose general requirements for handling ignitable, reactive, or incompatible waste in § 267.17 which are similar to the existing requirements found in § 264.17. These general requirements minimize the potential for accidents when you handle ignitable or reactive waste, or when you mix incompatible wastes. Extreme heat or pressure, fires, explosions, violent reactions, or damage to the structural integrity of the device or unit containing the waste are clearly undesirable because of the likelihood that they will cause injury or death or release hazardous waste into the environment.

**9. What are the proposed standards for selecting the location of my facility?** The proposed technical standards would require you to comply with location standards described in § 267.18. These standards are similar to the location standards currently found in § 264.18. We believe that the location characteristics of a facility are an important consideration in ensuring safe waste management. The hazards a facility could present to human health and the environment may be increased by locating a facility in certain areas. These proposed location standards are designed to reduce these additional risks. We believe that you should be required to submit the information required by the location standards to the permitting agency, because the location of the facility is a site-specific factor that determines its suitability for hazardous waste management activities. We discuss the submittal of this information to the permitting agency in more detail later in **Section IX B: What Information would I need to submit to the Permitting Agency to Support my Standardized Permit Application?**

The proposed location standards found in § 267.18 would restrict the siting and waste management activities of facilities in floodplains and seismic zones. We determined in 1981 that waste management activities should be restricted in those two areas because of the risks that these locations pose.

The existing § 264.18(c) provision that sets forth location standards for salt domes, salt bed formations, and underground mines and caves is not included in the proposed location standards of § 267.18 because this provision deals with hazardous waste disposal which is not eligible for a proposed standardized permit.

The proposed § 267.18 standards retain the existing § 264.18(b) provisions allowing facilities to locate within a 100-year floodplain as long as the facility meets proper design, construction, and operating requirements to prevent washout, and to seek a waiver if the facility can remove the waste before flood waters can reach the facility. If a waiver is granted, the facility to where the waste is moved would be required to either have a RCRA permit to manage that particular waste or have interim status. We invite comments on whether we should retain the floodplain waste removal waiver in the standardized permit. It has been our experience that the submittal and approval of any waiver involves a lengthy review process. This review process may defeat the streamlined permitting goal of the standardized permit.

The § 264.18(b)(ii) provisions are specific to land disposal waste management activities and is not applicable to the standardized permit situation. Therefore, these requirements have not been added to the proposed § 267.18(b) provisions.

**10. Would I be required to have a construction quality assurance program?** No, under the proposed rule, you would not need a construction quality assurance program because you are not managing waste in land disposal units. The existing § 264.19 construction quality assurance

program has provisions that are applicable to surface impoundments, waste piles, and landfill units. Because these units are considered land disposal units and not eligible for a proposed standardized permit, the construction quality assurance program is not included in the proposed part 267 requirements. Therefore, we did not include a section containing those provisions.

#### **D. Subpart C - Preparedness and Prevention**

This proposed subpart contains standards that would require you, as the owner or operator of a hazardous waste facility, to minimize threats to human health and the environment caused by the release of waste from a fire, explosion or any unplanned event. Except where noted, the proposed requirements of this subpart are the same as those currently found in subpart C of part 264. We are requesting your comments on these proposed preparedness and prevention requirements.

**1. What are the proposed general design and operation standards?** Proposed § 267.31 would require you to design, construct, maintain, and operate your facility to minimize threats to human health and the environment caused by the release of waste being managed at the facility from a fire, explosion or any unplanned event. This is the same provision that is found in existing § 264.31.

**2. What equipment would I be required to have?** Proposed § 267.32 would require you to have certain equipment at the facility, including an alarm system, communication equipment, fire extinguishers and fire control equipment, and either water for hose streams, foam equipment, or water spray systems. This proposed provision would also allow you to not have certain equipment if the potential hazards at the facility don't warrant having the equipment. This proposed section differs from the existing § 264.32 in that the Director would not have to make a

determination about whether your facility can be exempt from having some of the required equipment. However, you would be required to keep documentation supporting any equipment exemption at the facility and you would make the documentation available for review by the permitting agency and the public. In this respect, the proposed § 267.32 is the same as the current § 265.32 regulation governing interim status facilities.

**3. What are the proposed testing and maintenance requirements for the equipment?**

Proposed § 267.33 would require you to test and maintain, as necessary, all the equipment proposed in § 267.32 so that it would be ready when needed. This provision is the same as the requirements currently found in § 264.33.

**4. When would personnel be required to have access to communication equipment or an alarm system?** Proposed § 267.34 would require all personnel involved in waste handling to have ready access to the communication equipment and alarms, including situations when only one employee is working at the facility. The requirement would not apply when the equipment is not required under proposed § 267.32. As opposed to the existing requirements in § 264.34, no prior determination by the Regional Administrator would be required for the exemption. However, you should keep documentation supporting the exemption at your facility, and would be required to make it available for review by the public and the permitting Agency. This is the same approach applicable to interim status facilities under existing § 265.34.

**5. How would I ensure access for personnel and equipment during emergencies?**

Proposed § 267.35 would require you to maintain sufficient aisle space to allow for rapid remediation of any emergency. The aisle space should be wide enough to allow personnel, fire protection equipment, spill control equipment, and decontamination equipment to move to any

facility operation in the case of an emergency. This provision is the same as the current § 264.35 requirement, except for the provision for a waiver in § 264.35. We have not provided for a waiver in proposed § 267.35 because we do not believe, under the proposed standardized permit, that a situation would arise when sufficient aisle space should not nor could not be provided.

**6. What arrangements would I be required to make with local authorities for emergencies?** The proposed § 267.36 provisions would require you to attempt to make arrangements with local police, fire and emergency response authorities, and hospitals to assist in responding to emergencies. These requirements are similar to those found in existing § 264.37 and include provisions on familiarizing emergency response personnel with the facility layout, properties of the wastes you manage, possible evacuation routes, and types of injuries or illnesses that could result from fires, explosions, or releases at the facility. You would be required to document, in the facility's operating record, any refusal on the part of any of the State or local authorities to enter into such arrangements.

#### **E. Subpart D - Contingency Plan and Emergency Procedures**

This proposed subpart contains standards that would require your facility to have a contingency plan that describes how hazards to human health and the environment will be minimized. The requirements of this proposed subpart are similar to the provisions currently found in subpart D of part 264, with the exception that you would not be required to submit the plan with your application.

**1. What is the purpose of the proposed contingency plan and how would I use it?** The proposed provisions of § 267.51 would require you to have a contingency plan at your facility. The purpose of the plan is to minimize hazards to human health or the environment whenever a fire,

explosion or unplanned event results in the release of hazardous waste or hazardous waste constituents. You would be required to comply with the proposed requirements of § 267.51 immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous constituents that could threaten human health or the environment. The proposed requirements in § 267.51 are the same as the provisions currently found in § 264.51.

**2. What would be required to be in my contingency plan?** Under proposed § 267.52, you would be required to include the following in your contingency plan: a description of the planned response to emergencies at your facility; any arrangements with local and state agencies to provide emergency response support (§ 267.36); a list of your facility's emergency coordinators, a list of your facility's emergency equipment; and an evacuation plan, where necessary. The primary purpose of the proposed contingency plan is to ensure that you have anticipated potential emergencies and have developed appropriate response plans. Under EPA's existing "one-plan" guidance for contingency planning (61 FR 28641, June 5, 1996), you are currently allowed to consolidate multiple plans that may be required under various regulations into one functional emergency response plan. Facilities that are required to comply with the existing § 264.52 requirements, are allowed to meet these requirement by following the "one-plan" guidance. Likewise, if you need to comply with proposed § 267.52 requirements, you would not need to prepare a separate plan if you already had a contingency plan that followed the "one-plan" guidance. The proposed requirements of § 267.52 are similar to the current provisions of § 264.52. However, proposed § 267.52 does not include the existing requirement of § 264.52(d) to submit the compliance plan information at the time of certification. However, this information would be kept at the facility as proposed by § 270.290(g).



**3. Who would be required to have copies of the contingency plan?** Section 267.53, as proposed, would require that you keep a current copy of the plan at your facility and give copies to all local authorities, including hospitals, that may be called in the event of an emergency. This requirement is the same as the provision in current § 264.53. You may choose, in the interests of promoting good community relations, to provide a copy of the plan to the heads of any local community groups as well. EPA has learned anecdotally that communities can be very interested in this type of information.

**4. When would I have to revise the contingency plan?** Proposed § 267.54 lists the criteria that dictate when you would need to revise the contingency plan. The proposed § 267.54 requirements are the same as provisions currently found in § 264.54. Factors that would require you to modify the contingency plan include changes in any of the lists of equipment or emergency coordinators, a failure of the plan when it was implemented, permit revision, and changes in design, construction, operation, or maintenance that materially increase the potential for harm to human health or the environment.

**5. What is the proposed role of the emergency coordinator?** Section 267.55, as proposed, would require at least one employee to be responsible for coordinating all emergency responses. The employee may be either at the facility or on call, and would be required to be knowledgeable of all aspects of the contingency plan, the facility operations, the waste handled, location of records, and facility layout. Equally important, the employee should be able to commit necessary resources to implement the contingency plan. Existing § 264.55 has the same requirements.

**6. What are the proposed emergency procedures for the emergency coordinator?**

Proposed § 267.56, which elaborates on the responsibilities of the emergency coordinator, is the same as the existing provisions found in § 264.56. Applicable responsibilities vary with type and variety of waste handled and the complexity of the facility. The responsibilities include the following: activating alarms; notifying appropriate State and local authorities, as needed; identifying the nature, source, and extent of any release; assessing possible hazards to human health or the environment; and monitoring for leaks, pressure buildups, gas generation, or ruptures, as appropriate.

Proposed § 267.57 discusses actions that the emergency coordinator would be required to take after an emergency. These actions include the following: the treatment, storage, or disposal of any materials or waste that result from a release, fire, or explosion at the facility; and the examination and replacement, if necessary, of any emergency equipment you use in response to the emergency. This provision corresponds to existing § 264.56(g) and (h).

Proposed § 267.58 identifies your responsibilities, as the owner or operator of a hazardous waste management facility, operating under a standardized permit. You would be required to notify the Director and appropriate state and local authorities about details of the incident that required implementing the contingency plan. This provision corresponds to existing § 264.56 (i) and (j) .

#### **F. Subpart E - Record keeping, Reporting, and Notifying**

This proposed subpart of 267 contains the standardized permit record keeping, reporting and notifying requirements.

**1. When would I need to manifest my waste?** Because the part 267 standardized permit regulations, as proposed, would not apply to facility owners and operators who receive waste

from off-site, the requirements currently found in § 264.71 (a), (b), and (d) are not included in § 267.71. Existing regulations that apply to waste sent from the generator § 264.71(c), has been retained in proposed § 267.70. This is because there could be situations where waste generated, stored, or treated at a facility operating under a standardized permit could be shipped off-site for final treatment or disposal. Also this proposed subpart has been renamed (compared to subpart E of part 264) to reflect that no manifest system is involved. The existing provisions of § 264.72, which cover manifest discrepancies, apply only to wastes received from off-site sources. Because the proposed rule does not currently apply to off-site shipments, we did not include that section in Part 267. As mentioned earlier in **Section I E 3**, we are interested in your comments on whether the scope of the proposed standardized permit regulations should be expended to include facilities that treat or store waste generated off-site.

**2. What information would I need to keep?** Proposed § 267.71 would require you to maintain a record of operations at your facility. This provision is similar to the current requirements found in § 264.73. You would be required to keep the operating record at your facility until final closure of your facility. The information that you would place in the operating record includes the following: descriptions and quantities of waste handled, location of the wastes at the facility, results of waste analyses and determinations, reports of incidents that required implementing the contingency plan, inspection reports, monitoring and testing data, closure cost estimates, waste minimization certification, and information required under the land disposal restrictions found in part 268 of this chapter. Under existing § 268.7, if a generator sends waste off-site for land disposal, the generator must determine if the waste has to be treated before it can be land disposed. The generator must keep records that were used to make this

determination. Because proposed part 267 only applies to the on-site storage and treatment of hazardous waste, certain existing paragraphs in § 264.73 were not included in the proposed § 267.71 standards.

**3. What records would I provide to the permitting agency?** Proposed § 267.72 stipulates that you would furnish all records required in this part upon request to the permitting authority. This is the same requirement currently found in § 264.74. It should be noted that proposed part 270 subpart I requires many of the same records be made available to the public for review. However, the Agency is not proposing to make the entire operating record available for public review. This is the same as the current situation; a RCRA facility's operating record is not subject to public review. However, the information described in part 270 subpart I is subject to public disclosure. See **Section IX B: *What Information would I Need to Submit to the Permitting Agency to Support my Standardized Permit Application?***, and **Section IX D: *What Information would be Required to be Kept at My Facility?***. The existing provisions in § 264.74(c) are not proposed for § 267.71, because they apply to land disposal, which is not currently covered by the proposed standardized permit.

**4. What reports would I need to prepare and who would I need to send them to?** Proposed § 267.73 contains the same requirement for submitting a *biennial report* as the existing requirements of § 264.75. As with 264.75, the report covers a facility's activities including: the method of treating or storing waste, the most recent cost estimate for closure, waste reduction efforts, and changes in waste volume and toxicity. Section 264.75(c) and (d), which applies to off-site facilities and wastes received, have not been included in proposed § 267.73, because the proposed standardized permit does not apply to such facilities.

Because the existing § 264.76 provision for *unmanifested waste report* applies to facilities that receive waste from off-site, which is not currently allowed under the proposed standardized permit rule, that section has not been included in proposed § 267.73.

Proposed § 267.73 also lists reports, in addition to the biennial report, that you would have to submit in special circumstances. You would report on fires, releases, and explosions at your facility and report when your facility closes. You would also submit any other reports required for container storage units, tanks, and containment buildings, and reports required under the air standards in part 264 subparts AA, BB, and CC.

**5. What notifications would be required?** If your facility changes owner or operator, you would be required to notify that person, in writing, of the proposed requirements of § 267.74 as well as those in proposed part 270.

## **G. Subpart F – Releases from Solid Waste Management Units**

**1. Would this proposed rule require me to address releases of hazardous waste or constituents from solid waste management units?** This proposed rule would require you to undertake corrective action to address releases of hazardous waste or constituents from solid waste management units (SWMUs) ( the “facility-wide corrective action requirement imposed by section 3004(u)) if your facility, or a portion of your facility, as a condition of your standardized permit (unless of course, standardized permit conditions are being added to an existing permit that already addresses corrective action).

The corrective action requirements proposed for standardized permits for storage facilities are identical in substance to the existing corrective action requirements for non-standardized

permits for such facilities<sup>4</sup> and, as in the case of non-standardized permits, site-specific cleanup requirements would be required to be determined on a site-by-site basis. Because corrective action requirements are site-specific, EPA or the authorized State would include them in the supplemental portion of your standardized permit.

**2. Are the proposed corrective action requirements for standardized permits different from the corrective action requirements for individual permits?** The proposed corrective action requirements for standardized permits are specified in § 267.101 of Part 267 Subpart F and are analogous in substance to the current requirements of § 264.101, which otherwise would apply to the facilities addressed in this proposed rule.<sup>5</sup> Proposed § 267.101(a) (analogous to existing § 264.101(a)) would impose the general RCRA section 3004(u) requirement that all facilities seeking a permit must conduct corrective action as necessary to protect human health and the environment for all releases of hazardous wastes or constituents from solid waste management units at the facility. Proposed § 267.101 (b) (analogous to existing § 264.101(b)) would require that the permit specify a schedule of compliance for completing corrective action at the facility (where corrective action is not completed prior to permit issuance), and provide assurances of financial responsibility for completing corrective action. Proposed § 267.101(c)

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<sup>4</sup>The specific language of the provisions, however, differs from the language in Part 264 because of the Agency's recent efforts to use "plain language" techniques when drafting regulations and other documents.

<sup>5</sup> You should note that there are significant differences between existing part 264 subpart F and proposed part 267 subpart F, because the hazardous waste management units that are proposed to be eligible for standardized permits are not subject to most existing provisions of part 264 Subpart F. The existing requirements of §§ 264.91 - 100, apply to "regulated units," which are currently defined in § 264.90 as surface impoundments, waste piles, and land treatment units or landfills that receives hazardous waste after July 26, 1982. Since these units are not proposed to be eligible for the standardized permits, proposed part 267 Subpart F does not contain provisions analogous to sections 264.91-100.

(analogous to existing § 264.101(c)) generally would require you to conduct corrective action beyond the facility boundary, and to provide financial assurance for such corrective action. Proposed § 267.101(d) (analogous to existing § 264.101(d)) provides that facilities that require a RCRA permit only because they treat, store, or dispose of hazardous waste in the course of conducting a cleanup are not subject to the facility-wide proposed corrective action requirements of § 267.101.

**3. Why are we proposing these requirements?** In the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), Congress directed EPA to require corrective action as necessary to protect human health and the environment for releases from all solid waste management units (SWMUs) at hazardous waste treatment, storage, and disposable facilities seeking a permit. Section 3004(u) of RCRA requires that any permit issued under section 3005(c) of RCRA to such a facility after November 8, 1984, address corrective action for releases of hazardous wastes or hazardous constituents from any SWMU at the facility. Section 3004(u) requires that schedules of compliance (where corrective action cannot be completed prior to permit issuance) and financial assurances for completing such corrective action be included in the permit. In addition, section 3004(v) directs EPA to require corrective action beyond the facility boundary, where permission to conduct such corrective action can be obtained. Because standardized permits, like non-standardized permits (individual permits and permits-by-rule), would be issued under the authority of section 3005 of RCRA to facilities seeking a permit, these corrective action requirements extend to standardized permits as well and EPA has included these requirements for corrective action in proposed part 267.

**4. Why would the proposed corrective action requirements be included in the**

**supplemental portion of the standardized permit?** One of EPA's objectives in developing this proposed rule was to streamline the permit application and permit issuance processes by developing generic design and operating standards for storage permits, thereby avoiding detailed review of permit applications. To the extent possible, we have developed such standards and proposed them in this rule. However, in developing this proposal, we had to balance our desire for a streamlined permitting process against the need for flexibility in the corrective action program. In the past 16 years, since we began implementing the corrective action mandates of HSWA, EPA has been reminded consistently that most sites in the RCRA universe are unique, and that site-specific determinations for corrective action remedies are typically vital to assuring the best remedy is selected at each site. Based on this experience, rather than attempting to develop generic standards for corrective action, we chose early in the development of this proposed rule to utilize the same site-specific flexibility for corrective action under standardized permits as is currently available under non-standardized permits. That corrective action process provides us with considerable flexibility to fashion remedies that are protective of human health and the environment and that reflect the conditions and the complexities of each facility.

We solicit comment on this proposed approach to corrective action in standardized permits. Further, though we have not proposed standardized permit conditions for corrective action, we specifically request suggestions for standardized permit conditions that might be used for corrective action under standardized permits.

**5. Would I be able to utilize the flexibility provided by CAMUs, temporary units, and staging piles when I conduct corrective action under a standardized permit?** All of the flexible mechanisms available under non-standardized permits for corrective action would be



available to you under a standardized permit. To utilize any of these mechanisms, you would be required to comply with the existing requirements in part 264 that are applicable to them.

#### **H. Subpart G - Closure**

The title of this subpart has been changed from the current part 264 subpart G title: “Closure and Post-Closure” because we are proposing that facilities with standardized permits be required to meet clean closure standards (or obtain individual RCRA post-closure permits instead). Also, land disposal facilities (which are subject to post-closure care) are not proposed to be eligible for standardized permits.

For most cases, the basic proposed requirements of subpart G in part 267 parallel the existing provisions in part 264 subpart G. However, we propose several changes to the closure provisions in part 267. These proposed changes include the following: the closure plan not being submitted until at least 180 days prior to closure, not allowing the option to close as a landfill and therefore requiring clean closure, and not allowing time extensions for closure. The policy considerations prompting these changes are discussed in further detail below.

The purpose of these proposed changes is to streamline the closure process in appropriate areas by eliminating unnecessary review and approval of plans by the permitting agency. By not requiring a closure plan until 180 days before closing, you would have better knowledge of what steps and procedures should be taken to ensure closure of each waste management unit. This would preclude the necessity of changing the plan and modifying the permit, which is typically the sequence of events under the existing individual permit process.

Once a standardized permit rule is promulgated, we would recommend that you begin preparing your closure plan as early as possible prior to the submittal of the plan, preferably when the other documents that are normally part of the existing Part B application are prepared. This

would allow you to update and change the plan as more details become available. We are proposing that the plan be required to be submitted at least 180 days before you expect to begin closure, and you may not know that date until shortly before the 180-day period. Once a final rule is in place, preparing the plan early would better enable you to meet the deadline.

We are asking comments and suggestions for procedures to be followed in the event that you do not know you are to receive the last volume of hazardous waste until you are within the 180-day period. As the proposed regulations read, you would be required to submit the closure plan at least 180 days before you begin closure, and you would be required to complete closure within 180 days of receiving the last hazardous waste shipment, but you would not be able to begin closure without an approved closure plan. If, because of circumstances that you could not have foreseen, you were unable to submit a closure plan in the time required, you could be in violation of the regulations.

We have considered several options for addressing this situation, and we invite comments on these as well as suggestions for other possible options. One option would be to require the closure plan to be submitted with the original permit application, as in individual permits. Another approach would be a waiver limited to narrow circumstances, such as a bankruptcy forcing an unexpected final shipment of waste. Alternatively, we could attempt to develop a standardized closure plan for each type of unit. The Agency could also leave this aspect of the proposal unchanged, which would place the burden of compliance on you. Under that approach, if you are in a type of business in which it is difficult to predict when the final shipment of waste might occur, we would encourage you to consider submitting your closure plan early to minimize potential noncompliance.

We also intend to simplify the closure plan requirements, by proposing to require the units

covered by the standardized permit to meet “clean closure requirements.” We believe that in most cases the units can meet these requirements and therefore would not require post-closure care. Consequently, part 267 subpart G, as proposed, contains no provisions for units to close as a landfill or to undergo post-closure care. If your facility could not be clean-closed, you would be required to apply for an individual “post-closure care” permit under the proposed rule. No separate provisions are proposed for modifying the closure plan. We believe that a plan submitted at least 180 before clean closing a container storage area, tank system, or containment building would not require modifying. Since the closure plan would become part of the permit, we are proposing that any changes to the closure plan would be required to follow the permit modification procedures found in §§ 124.211-213. We solicit comments on this requirement and whether our assumptions are valid.

We are also considering an option of not requiring a closure plan. A written plan may not be necessary because we are proposing to require clean closure of all units, and because the procedures for clean closing the types of units subject to this rule should not vary greatly. Instead, we would use inspections and certifications to assure that the unit(s) were closed in accordance with the clean closure performance standards in § 267.111 (general closure standards), § 267.176 (containers), § 267.201 (tanks), and § 267.1108 (containment buildings).

Under this proposed option, the clean closure requirements, including any site-specific requirements, would be written as conditions into the permit. The permitting agency inspectors would verify that all remaining hazardous waste was properly removed and that decontamination and removal of equipment was accomplished according to the permit conditions. The independent professional engineer would also certify that the facility was closed according to the permit conditions, rather than the closure plan as currently proposed in § 267.117. You would still be

required to notify the director 45 days before you expect to begin final closure of a unit, so that the permitting agency inspectors and the independent professional engineer can be present.

We invite comments on the feasibility of not requiring a closure plan and on the enforceability of performance standards in the permit. We note that, if you select option 4 as a means of estimating closure cost (see **Section VII.I.6.**) you would have collected all of the information necessary to prepare a detailed closure plan.

Operations at the units affected by this proposed rule should not effect your ability to clean closure because spills should not occur. The containment standards for container storage areas in section § 267.173 are designed to prevent releases from accidental spills. Furthermore, the proposed standards do not allow a waiver from secondary containment for tanks systems, which will also prevent releases from accidental spills. Finally, the proposed standards require that any releases be quickly collect and contained. For these reasons, a detailed closure plan may also not be necessarily.

**1. What general standards would I need to meet when I stop operating the unit?** The proposed closure performance standards of part 267 subpart G are the same as the performance standards currently found in part 264 subpart G. Tanks, container storage areas, and containment buildings are required in both part 264 and under today's proposal to "clean close." Both parts 264 and 267, however, allow you to close tanks and containment buildings as landfills if you cannot attain clean closure. Under the proposed part 267 standards, you would be required to obtain an individual post-closure permit, separate from the standardized permit, if you do not clean close. Thus, for these types of units to continue to be eligible for the standardized permit, you would be required to remove all waste, decontaminate the containment unit, and clean up any spills during closure. The proposed performance standard found in § 267.111 would require you

to minimize the need for further maintenance and to minimize or eliminate the potential for post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the extent necessary to protect human health and the environment. We propose minor citation changes in § 267.111(c) to remove inapplicable regulatory references that were in the existing requirements in § 264.111.

We invite comments on whether to make other options available to facilities that cannot meet the clean closure standards. Under the Post-Closure rule (63 FR 56710, October 22, 1998), if you own or operate a facility with land disposal units, you would have the options of obtaining a post-closure permit or integrating the closure of the unit with on-going corrective action activities in progress at the facility. We are interested in comments on whether a similar process should be available to storage and treatment units covered by the standardized permit that have difficulty clean closing. Under this option, you may not have to obtain an individual post-closure permit if you can address the residual contamination at the closing unit by on-going corrective action activities at your facility.

**2. What procedures would I need to follow?** You would need to follow the procedures listed in proposed §§ 267.111-267.113. These requirements for a written closure plan in proposed § 267.112 parallel those in existing § 264.112, for the most part. One notable exception is that you would not have to submit the plan until at least 180 days before you expect to begin closure. Generally, closure of a unit begins within 90 days of receiving the last volume of waste. Under today's proposal, you would be required to notify the permitting authority 45 days prior to beginning the final closure of a unit. You would still have your closure plan approved by the Director before you begin closure. In addition, because you would not submit the plan with the Notice of Intent described in **Section III A 2: *Submit a Notice of Intent to operate under the***

*standardized permit along with appropriate supporting documents*, the Director would provide the public an opportunity to comment on the plan. You would provide persons on the facility mailing list with a copy of the closure plan at the same time you submit a copy to the permitting authority. You would also place a notice in the local newspaper notifying the public of the opportunity to comment on the plan. The comment period would be open for 30 days. After review of the public comments, the permitting agency would approve, modify, or disapprove the plan. The permitting authority would have 60 days after receipt of the closure plan to make its decision on it.

You would identify and describe in the plan all steps necessary to perform partial and/or final closure of the facility. The proposed § 267.112(b) provisions describe the contents of the closure plan. These provisions are similar to the current requirements found in § 264.112(b) with a few exceptions. You would be required to describe in the plan how you would close each hazardous waste management unit in accordance with the closure performance standards of proposed § 267.111. You would also include, in the plan, an estimate of the maximum inventory of hazardous waste on-site at the facility and a detailed description of the method you would use during final closure for removing, transporting, treating, storing, or disposing of all hazardous waste and identify the types of off-site hazardous waste units you plan to use. You would describe the steps needed to remove or decontaminate hazardous waste residues, contaminated containment system components, contaminated soils, and contaminated ground water. You would also include a schedule for closure of each hazardous waste management unit and the total time for closure of each unit.

No provisions are included in proposed § 267.112 for closing land disposal units or combustion facilities because they are not proposed to be eligible for a standardized permit. We

would retained the provision that allows you to modify the closure plan before you notify the Director of your intent to close. Even though you do not have to submit a closure plan until 180 days before you begin closing, we understand that unusual circumstances could cause you to change how you plan to close your facility. To allow for that situation, we have included procedures for modifying your closure plan through a permit modification. Proposed § 267.112(c) includes procedures for amending the closure plan. As with the original plan, you would have to submit the modified plan to the Director of the permitting authority for approval before you could begin closure. Proposed § 267.112 does not contain provisions that require you to modify the closure plan. We do not anticipate that we would need to require you to change the plan given the fact you are submitting it just six months prior to closure of the units.

We are proposing in § 267.112(d) to greatly simplify the existing § 264.112(d) requirement for you to notify the Regional Administrator when closure is expected to begin. This simplification results from several factors. First, we are proposing to limit the applicability of the standardized permit to on-site storage and treatment units. Second, we are proposing to allow only clean closure of the units covered by a standardized permit. Third, we are proposing to prohibit any extensions to the start of closure. These factors are intended to greatly simplify the closure notification provisions currently found in § 264.112(d).

We used provisions similar to those found in the current part 265 interim status requirements as a model for the proposed provisions found in § 267.112(d). We modified slightly in proposed § 267.112(c) and § 267.113 the existing § 265.112 (d)(4) process for submitting and approving the closure plan. Proposed § 267.113 requires the Director to make the closure plan available for public review and comment. This provision is necessary because the closure plan is not available for comment by the public at the time the “notice of intent” is submitted to the

permitting agency.

**3. After I stop operating, how long would I have until I close the unit?** We are proposing to simplify the requirements for the time allowed for closure in proposed § 267.115 from those found in existing § 264.113. As proposed, § 267.115(a) would require you to begin closure of the unit following the approved closure plan within 90 days after you receive the final volume of hazardous waste. Because we are proposing to require you to clean close the hazardous waste management units, and because you would not have to submit the closure plan until six months prior to closure under this proposal, we do not expect you to need any extension to the closure period. Additionally, the nature of the units subject to this rulemaking reduces the likelihood of any unforeseen circumstances making the closure take longer than planned. We have therefore decided to propose that no time extensions for closing are appropriate for the standardized permit. The § 267.115(b) provisions, as proposed, require you to complete final closure activities in accordance with your approved closure plan within 180 days after receiving the final volume of waste. We do not believe that the existing § 264.113(c) provisions are appropriate for standardized permitting because they focus on the timing of demonstrations for extending the closure period. Existing § 264.113 (d) and (e) have not been incorporated into proposed part 267 because they apply to land disposal units which are not considered in this proposed rule.

The Agency invites comments on the requirement for closure within 180 days. Extensive ground water contamination may prevent the owner or operator from completing clean closure within 180 days. Under this situation, should the Agency allow for extending the closure time period or should the owner or operator be required to apply for a post-closure permit (or use the corrective action process)?



**4. What would I have to do with contaminated equipment, structures, and soils?** We are proposing to adopt the requirements for disposal or decontamination of equipment, structures, and soils that are currently found in § 264.114 for standardized permits. Proposed § 267.116 repeats most of the existing part 264 requirements. You would have to properly dispose of or decontaminate all equipment, structures, and soils. You would be required to handle any waste that is removed during closure of a unit according to the generator standards of existing part 262. Several regulatory citations found in existing § 264.114 were not repeated in proposed § 267.114 because they are applicable to land disposal or combustion situations.

**5. How would I certify closure?** The provision for certifying closure is in proposed § 267.117 and is similar to the current provision in § 264.115. This proposed provision would require you to submit a certification, signed by you and by an independent registered professional engineer, that you have closed your facility following the approved closure plan.

## **I. Subpart H - Financial Requirements**

Much of the regulatory language in this proposed rule uses a format of questions and answers that refers to the permittee as “you” and to EPA as “we.” Except for the introduction to the regulations (§ 267.140), the proposed language in Subpart H does not follow the question and answer format, and it does not use these first and second person pronouns to identify the subject. There are two main reasons for this difference. First, the underlying current financial responsibility regulations in subpart H of 40 CFR 264 and 265, which remain integral to the proposed part 267 regulations, do not use first and second person pronouns, and EPA has not rewritten the existing part 264 and 265 regulations to conform to the question and answer format. The regulations proposed here cross reference the existing part 264 regulations extensively, and often provide that compliance with an existing part 264 provision would constitute compliance

with proposed part 267. This linkage of the regulations is necessary so that firms with facilities under both existing part 264 (or part 265 regulations) and proposed part 267 could use the same mechanism for more than one facility, thus eliminating the expense of a separate mechanism. EPA expects that several firms using the proposed standardized permit could have other facilities operating under existing part 265 interim status or part 264 permitting standards.

Second, unlike many other permitting regulations, the responsibilities in the financial assurance regulations often extend to parties other than EPA (or the state permitting agency) and the permittee. For example, a trustee agrees to perform certain functions as part of a trust agreement where EPA is the beneficiary, but EPA is not a signatory. Third, parties must fulfill these responsibilities and the language used for the documents often must conform to specific industry standards such as the Uniform Commercial Code. Because third parties are integral to the operation of the financial responsibility regulations, EPA has not proposed regulatory language based upon first and second person subjects.

If in the future EPA revises the language of existing parts 264 and 265, including the financial requirements sections, then EPA will make corresponding changes in proposed part 267 requirements. This would allow the changes to be consistent across facilities. At present, EPA believes that it is more important to maintain consistency with the existing part 264 and part 265 standards than to introduce substantially different proposed regulatory language in part 267 for the financial requirements.

**1. Who would have to comply with this subpart and briefly what would they have to do?** The financial responsibility requirements proposed for the standardized permit largely mirror the provisions found currently in 40 CFR part 264 subpart H. Under proposed § 267.140 you would have to comply with these regulations if you are the owner or operator of a facility that

treats or stores waste under a standardized permit, except as provided under proposed § 267.1(b), and § 267.140(d), which similarly to current part 264 subpart H, would exempt the States and the Federal government from the requirements of this proposed subpart. If you are subject to these proposed regulations, you would be required to prepare a closure cost estimate, demonstrate financial assurance for closure, and demonstrate financial assurance for liability. You would also notify the Regional Administrator if you are named as a debtor in a bankruptcy proceeding under Title 11(Bankruptcy), U.S. Code.

**2. Definitions.** The definitions and terms proposed in § 267.141 largely follow those currently used in § 264.141. As discussed below, the proposed regulatory text includes a financial test as a method of complying with the financial assurance requirements that reflects the test that EPA has proposed for other hazardous waste TSDFs. Because this proposed test does not use some of the terms in the current financial test, EPA has not included all of the definitions in the current part 264 regulations in the proposed part 267. If EPA promulgates the current Subtitle C financial test instead, EPA will include those definitions when it promulgates this rule in final form.

**3. Closure cost estimates.** For the financial assurance portion of the standardized permit rule proposal, EPA has tried to develop a process that takes into account the differing regulatory and operating status of facilities that will seek a standardized permit. The first group is facilities that already are subject to part 265 subpart H interim status standards and are already providing financial assurance. The second group of facilities may already be permitted and providing financial assurance under the part 264 subpart H requirements, but wish to switch to a standardized permit. Both of these types of facilities will already have closure plans, cost estimates and financial assurance instruments in place before receiving a standardized permit.

EPA believes that the regulations proposed here will not cause conflicts for facilities that are already complying with the existing part 264 and 265 standards. EPA requests comments on any aspects of this proposal that appears to cause conflicts for facilities switching from either part 264 or part 265 requirements to a proposed standardized permit.

The third group is new facilities that will adopt the standardized permit so that they can begin operation. The proposed standardized permit rule would require them to have a closure cost estimate even if they do not yet have a closure plan. There is no separate deadline for the initial estimate. The cost estimate is necessary to comply with the requirement for a financial responsibility instrument which has its own deadline.

Similar to the requirements for other permitted facilities, you would be required to develop and keep at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the proposed closure requirements of §§ 267.111 through 267.117, and applicable closure proposed requirements in §§ 267.176, 267.201, and 267.1108. Unlike the requirements for facilities operating under individual permits, initially you would not have to base these cost estimates upon a closure plan, since treatment and storage facilities with a standardized permit need not have a closure plan until six months before closure begins. However, we propose retaining the other requirements for closure cost estimates. Under proposed § 267.142(a)(1) the estimate would equal the cost of final closure at the point in your facility's active life when the extent and manner of its operation would make closure the most expensive. We are proposing in § 267.142(a)(2) that you base the closure cost estimate on the cost to hire a third party to close the facility. The closure cost estimate may not incorporate any salvage value from the sale of hazardous waste, non-hazardous waste, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure (proposed § 267.142(a)(3)).

Further, your cost estimate may not incorporate a zero cost for hazardous waste or non-hazardous waste that you might be able to sell because they have an economic value (proposed § 267.142(a)(4)).

In proposed § 267.142(b) you would be required to adjust the closure cost estimate for inflation within 60 days before the anniversary of the date you established the financial instruments to comply with § 267.143. Proposed § 267.143, which we discuss below, would require an instrument to demonstrate financial assurance for closure. If you use the financial test or corporate guarantee to demonstrate financial responsibility, you would be required to update your closure cost estimate for inflation within 30 days after the close of the firm's fiscal year and before submitting the updated financial test information to the Regional Administrator. We are asking for public comment on whether to change the deadline for updating the cost estimate for inflation for users of the financial test to 90 days after the close of the fiscal year. Changing to 90 days would make this requirement consistent with the deadline for updating the financial test. In adjusting your cost estimate, you could recalculate the maximum costs in current dollars or use an inflation factor derived from the Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce. This is a slightly different specification for the adjustment than is currently in § 264.142 because the existing regulations currently specify the use of the Implicit Price Deflator for Gross National Product rather than the Gross Domestic Product. We are proposing to use the Gross Domestic Product deflator since it is more readily available. Generally, the differences between the two series are not significant and we believe using the more readily available information will help you comply with this requirement.

Under proposed § 267.142(a)(5), you would be required to revise your closure cost estimate in accordance with the closure plan within 30 days after submitting your closure plan.

You would also adjust this revised closure cost estimate for inflation as proposed in § 267.142(b). These requirements mirror those currently in part 264 for facilities operating under individual permits.

Unlike the current § 264.142(c) requirement, you do not have to update the closure cost estimate when a modification to the closure plan has been approved. This is because there is no provision for updating an existing closure plan. Since you only need to submit a closure plan 180 days before closure, there is no need to have a provision allowing for modification of the plan, or for updating the cost estimate as a result of the modification. However, this absence of a modification requirement does not change your responsibility to maintain a current cost estimate. If you modify your operations so that the cost of closure would increase, you would be required to increase the closure cost estimate and provide financial assurance for that amount under proposed § 267.143.

Similarly, the proposed requirements in § 267.142(c) correspond to the existing requirements in §264.142(d) and would require you to maintain the latest cost estimate at the facility, and, when the cost estimate has been adjusted for inflation as proposed under §267.142, the latest adjusted closure cost estimate.

Currently, we are aware of various methods that owners or operators use to prepare closure cost estimates. You may base cost estimates for closure, in part, on your past experience closing other facilities. You also may use handbooks to estimate costs for labor, materials, and equipment associated with performing closure activities, such as decontamination, sampling and analysis of wastes or residues, or the off-site transportation and disposal of wastes. In addition, you may reference specific quotes or cost estimates from contractors to perform various closure activities. Whichever method of cost estimating you choose, you would be required to have a cost

estimate that meets all of the proposed requirements of § 267.142, and you would need to demonstrate that it meets the requirements.

**4. Methods for estimating costs for units eligible for standardized permits.** We would not require owners or operators of units eligible for standardized permits to submit to the implementing agency a complete closure plan as part of the initial standardized permitting process. However, we would still require you to prepare a cost estimate for closure as part of the initial standardized permitting process and under proposed § 267.112(a) to submit the closure plan at least 180 days prior to closure. In addition, under proposed § 267.142(a)(5) you would be required to submit a revised closure cost estimate no later than 30 days after submitting a closure plan. In conjunction with today's proposed rule, we are assessing different options that would provide to owners and operators several methods for preparing closure cost estimates for units eligible for standardized permits. Use of the methods would be optional. We intend to design methods that would reduce the burden on the regulated community of complying with proposed requirements under § 267.142 by enabling you to generate estimates that you and the permitting agency can accept as reasonably accurate without preparing an accompanying closure plan for those units. To facilitate the use of any of these alternative methods, we expect to provide guidance explaining the methods in detail and identifying the types of information that you will need to use them.

We recognize that estimating closure costs before developing a closure plan means that you might potentially have less information to factor into your estimates, which could make them less accurate. We are interested in obtaining information on the practical difference between the quality of cost estimates without closure plans and the quality of costs estimates currently received by permitting agencies. While we believe that the closure plan can lead to more accurate

estimates, we also have some information that even with closure plans, cost estimates can be incomplete or low.

We compared closure cost estimates submitted to states in one of our regions to an estimate we developed using a cost estimating methodology. This comparison showed a fairly consistent pattern of lower estimates from the owners and operators than from the methodology. Overall, the cost estimates from the owner or operator were about one-half of the estimates generated by the methodology's model.

We recognize that our evaluation of closure cost estimates only compares estimates developed by owners or operators to estimates generated using our methodology. We did not compare cost estimates from either of these sources with the actual costs incurred by viable owners and operators, or by States which have had to perform closures on facilities with non-viable (bankrupt) owners or operators. We seek information from owners or operators or state permitting agencies which compares the closure cost estimates with the costs actually incurred in performing closure, either by the owner or operator, or the state permitting authority. For more information on EPA's comparison of closure cost estimates please see the document entitled "Revised Draft Report on Analysis of Cost Estimates for Closure and Post-Closure Care," PRC Environmental Management, Inc., October 15, 1996 in the docket, and also on the Internet. See Supplementary Information. Because adequate cost estimates are an essential component of the financial responsibility program, EPA considered several options for improving cost estimates.

**5. We considered six options for developing cost estimates, but prefer three of them for this proposal.** We considered six options for guidance for developing closure cost estimates for units eligible for the standardized permit. Under each of the options we considered, our goal was to reduce the burden on owners and operators of developing such cost estimates. The options



we considered were:

- 1) have owners or operators provide to the permitting agency specific data from which the agency will calculate cost estimates for closure;
- 2) prepare a methodology for the agency to use to generate “default” cost estimates for closure;
- 3) develop a cost estimate matrix based on historical data;
- 4) provide to owners or operators standard forms that they can use to calculate cost estimates for closure;
- 5) prepare a methodology for owners or operators to prepare “default” cost estimates for closure; and
- 6) waive requirements to develop cost estimates for eligible units based on the owners or operators ability to demonstrate financial assurance for closure and post-closure care for all other types of units using the financial test or corporate guarantee.

Further information on these options appears in the docket to this rule.

We believe that Options 1 and 2: would remove from the owner or operator the responsibility of preparing a cost estimate for closure, would impose a significant administrative burden on the implementing agency, and might prevent the owner or operator from providing financial assurance for the unit immediately upon submitting its permit application because the owner or operator would have to wait for the implementing agency to generate a cost estimate before the amount of assurance required for closure of the unit could be determined.

Under Option 3, we would use actual costs government agencies incurred when performing closure at abandoned facilities to develop default cost estimates. We believe that we might be able to obtain such data from the files of authorized states or EPA regions that managed closures at

facilities when the owners or operators were unwilling or unable to do so. Because the cost data would reflect actual third-party expenditures incurred by the government, default cost estimates based on this research might provide a more realistic basis for demonstrations of financial assurance than cost estimates prepared under more traditional methods.

We have considered this option carefully because it might provide us cost data for closure that are more accurate than those currently available from other widely-used cost estimating methodologies. We may wish to undertake efforts to gather historical cost data for closures of abandoned facilities in the future. At this time, however, we have elected not to propose Option 3 because we do not currently have this information. If we receive sufficient information during the public comment period to support it, we may use such information in the final rule. We requests comments on the advisability of pursuing this option.

As noted above, however, we are requesting that anyone who may have historical cost data regarding the closure of any type of RCRA hazardous waste facility (not just facilities with only the types of units eligible for the standardized permit), or who knows how we might readily access such data, submit it to us for further consideration. To be useful for this effort, the historical cost data should be: 1) be specific to the actual costs and whether these costs were incurred when either the governmental agency or another entity closed specific units, 2) be specific whether the facilities were abandoned or not, 3) be in sufficient detail to identify costs for specific closure activities and 4) state when the closure activities occurred. Being able to relate specific costs to specific activities is an important factor in ensuring that we use the data properly when developing methods to estimate closure costs for units at facilities, particularly because the total costs incurred to effect “closure” at abandoned facilities frequently include costs of both corrective action and closure activities. Because the distinction between corrective action and closure

activities is not always clear, it can be difficult to differentiate between costs that pertain only to closure activities for the regulated unit and all other costs associated with the cleanup of a site. However, we can only use those cost data that differentiate the closure activities to support the development of less burdensome methods for estimating closure costs.

**6. Option 4, standard forms for estimating closure costs.** Under Option 4, EPA developed draft standard forms that you could use to estimate the costs of closing those units proposed to be eligible for a standardized permit. (See the report entitled “Closure Cost Estimates for Standardized Permits, Background Document - Option 4,” prepared by Tetra Tech EM Inc., December 31, 1998, available in the docket to this rulemaking and also electronically. See Supplementary Information.) Because cost data derived from private, nationally recognized sources often are proprietary, the draft forms do not contain suggested costs for specific closure activities. The draft forms, however, provide you with a methodology that would help reduce the burden on you by standardizing the cost estimating process. Use of the draft forms also would help to ensure that you recognize all applicable closure activities and incorporate them into your cost estimates for those activities.

Use of the draft forms would reduce the burden of complying with the applicable regulations because the draft forms would provide a step-by-step approach for developing cost estimates for closure. The draft forms would identify the specific activities required for closure in a standard format, so using the forms also would also reduce the burden on the regulatory agency of reviewing and evaluating cost estimates that you submit. It would be easier for the agency to review and evaluate the adequacy of cost estimates based on the forms because the agency could more easily check the costs of specific activities for reasonableness. However, we recognize that some may wish for a larger reduction of burden associated with cost estimating and so in addition

to this option we have also developed an Option 5, discussed below, that has a larger burden reduction, but tends to produce higher cost estimates than this option.

*What Information Would I Need to Develop Cost Estimates for Containers?*

In the case of container storage areas, information you would need to use the draft forms to develop closure cost estimates would include: 1) type and physical state of each waste you plan to store; 2) maximum capacity of each waste you plan to manage; 3) types of containers that you plan to use (for example, 55-gallon drums); 4) surface area of all pads, berms, or other secondary containment structures; 5) types of heavy equipment you plan to use during closure activities; 6) level of personal protective equipment (PPE) you anticipate needing during closure activities; 7) methods of decontamination you plan to use for the unit and for heavy equipment; 8) number and types of samples you plan to take and appropriate analytical procedures you anticipate using to determine “clean” closure; 9) a prediction of whether you will close with the containment system in place or will remove the containment system; and 10) methods you anticipate using to treat and dispose of all wastes you remove and all residues you generate during closure.

*What Information Would I Need to Develop Cost Estimates for Tanks?*

In the case of tanks, information you would need to use the draft forms to develop closure cost estimates would include: 1) types of tanks; 2) type and physical state of each waste you plan to store or treat in the tanks; 3) maximum capacity of each type of waste you plan to store or treat in the tanks; 4) interior surface area of the tanks; 5) length and nominal diameter of all ancillary piping; 6) surface area of all pads, berms, or other secondary containment structures; 7) types of heavy equipment you anticipate using during closure activities; 8) level of PPE you anticipate needing during closure activities; 9) methods of decontamination you expect to use for the unit and for heavy equipment; 10) number and types of samples you plan to take and appropriate analytical

procedures you anticipate using to determine “clean” closure; 11) a prediction of whether you will close the tanks in place or will disassemble and remove them; and 12) methods you anticipate using to treat and dispose of all wastes you remove and all residues you generate during closure.

*What Information Would I Need to Develop Cost Estimates for Containment Buildings?*

In the case of containment buildings, information you would need to use the draft forms to develop cost estimates would include: 1) type and physical state of each waste you plan to store at the unit; 2) maximum capacity of each waste you plan to store at the unit; 3) interior surface area of the containment building; 4) types of heavy equipment you plan to use during closure activities; 5) level of PPE you anticipate needing during closure activities; 6) methods of decontamination you plan to use for the unit and for heavy equipment; 7) number and types of samples you plan to take and appropriate analytical procedures you anticipate using to be performed to determine “clean” closure; 8) a prediction of whether you will close the containment building in place or will remove the containment building; and 9) methods you anticipate using to treat and dispose of all wastes you removed and all residues you generate during closure.

Using the draft forms and the information listed above, you would be able to estimate costs for all applicable closure activities for each of the three proposed types of eligible units. In addition to all basic closure activities, the forms would allow you to estimate costs for items such as certification of closure, contingencies, and management and design that frequently are overlooked during the preparation of cost estimates for closure.

We request comments on the potential for further development of Option 4. We recognize that of the information needs listed above for each proposed type of eligible unit, certain factors may be more crucial than others in increasing the accuracy of estimated costs. Some factors might not be necessary at all, or would not be cost-effective. Therefore, we also request comments on

which of the information needs listed above to require for use in estimating the costs for closure for the proposed eligible units.

**7. Option 5, default estimates for estimating closure costs.** Option 5 uses data from available cost estimating methodologies to develop “default” cost estimates for proposed eligible units. The methodology uses only a minimal amount of key, unit-specific data, you would use those data to calculate costs for all closure activities for each unit. (See the report entitled “Closure Cost Estimates for Standard Permits, Background Document - Option 5,” prepared by Tetra Tech EM Inc., December 31, 1998, available in the docket to this rulemaking.) To use this methodology, you would only need the following data: 1) type of unit; 2) maximum capacity of each waste that would be managed at the unit; and, 3) type and physical state of each waste that would be managed at the unit.

We have developed a possible methodology for container storage areas and tank systems. (We do not have sufficient information to develop this methodology for containment buildings.) The methodology for tank systems differentiates the costs based on whether you close the tanks in place or remove them. The approach further differentiates the costs based on whether the wastes are ignitable or non-ignitable. For both container storage and tank systems, costs per gallon can vary by the volume of waste in gallons. To determine the cost of closing the unit (exclusive of the cost of treating and disposing of the waste), you would multiply the cost per gallon for the size and type of unit by the maximum number of gallons of waste.

To determine the cost of treating and disposing of the waste in the units, we developed a table showing these costs per gallons for different types of waste. First, you would have to determine whether the waste is an aqueous waste or a non-aqueous waste. For an aqueous waste, a table shows a different multiplier depending upon whether the waste is in drums or in bulk,

because waste in bulk form is less expensive to treat and dispose of. For several dry wastes there is also a table that provides a cost per gallon for treatment and disposal. Again, you would produce a cost estimate for treating and disposing of the waste by multiplying the quantity of waste by the estimated cost per gallon. The total estimated cost for the facility would be the costs of closing the units plus the cost of treating and disposing of the maximum amount of waste you plan to handle.

We compared the costs using Option 5 with those using industry standard costs in Option 4. Our comparison shows that except for the smallest operations, the cost estimates in Option 5 are higher by an average of one-quarter to one-third. Thus, if you would want to minimize the amount of time necessary to derive a cost estimate, you could simply use the information in Option 5. Using Option 5 could be especially useful for those of you who would use the financial test and so do not incur the expense of obtaining a third party instrument whose costs depends upon the amount assured. Alternatively, if you would prefer to use a more involved method to obtain a more accurate closure cost estimate, you could use Option 4 or a more complicated approach of your choice. Currently, we believe that additional efforts by us to make the estimates generated using Option 5 (which is quick and easy to use) closer to the estimates generated by Option 4 or other methods are not warranted. Variations can occur around any closure cost estimates.

While we have discussed these alternative methods of estimating closure costs, the purpose of the proposed regulatory requirement for those of you operating under the standardized permit remains the same as for a facility currently operating under a Part 264 permit or under interim status. Under proposed § 267.142 you would be required to have a closure cost estimate that ensures you have sufficient funds available to close your facility properly. While options 4 and 5 provide simplified methods of estimating these costs, you would still be responsible for ensuring

that the use of these methods provides an estimate that will cover the costs of closure by a third party.

**8. Option 6, waiving the cost estimate for facilities using the financial test or corporate guarantee.** Under Option 6, we would waive the requirement that you develop cost estimates if you are able to demonstrate financial assurance for closure and post-closure care using the financial test or the corporate guarantee. We discuss the actual requirements of the financial test in a later section of the preamble. As discuss more fully latter, under this approach we presume a firm that passes the financial test has the financial wherewithal to close the facility. We base our presumption on the fact that a firm that passes the financial test has a very low probability of bankruptcy, and because the closure costs would not represent a significant outlay for the firm in comparison with its net worth.

**9. Availability of information on EPA's proposed approaches.** The regulatory language in this proposal does not specify any of the six options outlined above. Instead the proposed regulatory language in §267.142 includes only the requirement to develop the cost estimate. We intend to provide guidance on how to estimate closure costs for facilities with a standardized permit which have not already developed a closure plan. (Once the facility has submitted a closure plan, EPA proposes that the facility must update the closure cost estimate within 30 days to reflect the information in the closure plan). We have included in the docket to this rulemaking information explaining more fully the approaches for estimating costs under options 4 and 5. We seek comments on the advisability of these options (and on option 6 which we discuss more fully below) and on whether the use of guidance for cost estimating in the absence of a closure plan is advisable. If the commenter believes that we should require the use of a particular cost estimating techniques in the standardized permit regulations, we would like information on how to maintain



current costing methodologies in regulations. Since methodologies change over time, this approach could obligate us to update the regulations periodically and authorized states to adopt the updated language.

**10. Financial assurance for closure.** We designed the requirements proposed in § 267.142(a)(1)-(4) to ensure that the cost estimate which forms the basis for determining the amount of the financial assurance instrument required in § 267.143 would provide sufficient funds to close the facility properly at any time. We want to ensure that there would be sufficient financial resources to close the facility properly even in the event that you enter bankruptcy. The requirements proposed in § 267.143 specify the mechanisms from which you can choose to demonstrate financial assurance for closure obligations.

The proposed § 267.143 provides you the same mechanisms that are available to owners and operators of facilities operating under permits currently issued under part 264. However, we have made modifications to these requirements (from the analogous requirements in part 264) to account for the particular circumstances of the standardized permit. The differences between the requirements under §§ 264.143 and 267.143 are discussed below.

*Closure Trust Fund (§ 267.143(a))*

Under the proposed § 267.143(a) the pay-in period for the closure trust fund for the standardized permit facility would differ slightly from the requirement for facilities with permits issued under part 264. Currently, if you have a new facility seeking coverage under a part 264 permit, you must make annual payments into the trust fund over the remaining life of your facility, as estimated by your closure plan, or over the life of the permit which is usually ten years, whichever is shorter. Under the proposed standardized permit procedures, however, you would not have to provide a closure plan as part of the initial permitting process. Without the

requirement for a closure plan as part of the initial process, we needed a time period over which to compute the pay-in period, and so are proposing a period of three years. We chose this time period, which is shorter than the life of the permit as currently allowed for individual permits under § 264.143(a)(3), because the current requirements in §264.143(a)(3) were selected to accommodate types of operations, such as landfills, which would normally be receiving waste over a period of years, with potentially increasing closure costs over that time period.

Conversely, we do not expect facilities proposing to operate under the standardized permit to build up their waste volumes, and the resulting closure costs, over time. Moreover, the cost for closing a facility operating under the standardized permit would not include the costs of ground water monitoring, covers, or post-closure monitoring, so we would expect the cost to be less than for many of the other types of facilities with individual permits that are currently subject to § 264.143. Therefore, we anticipate that the burden of the three year pay-in period will not be excessive. Further, we note that requiring a three year pay-in period can preclude some potential problems that can arise under the longer pay-in period. For example, a long pay-in period can lead to insufficient funds being available at the time of closure. If the financial condition of the permittee were to deteriorate toward the beginning of the period, the owner or operator would not yet have funded a substantial fraction of the trust, and the permitting authority could be left with insufficient funds for closure in the event of the permittee's failure to perform closure.

Furthermore, the three year period is consistent with the requirements for financial assurance for commercial storers of PCB wastes. See § 761.65(g)(1)(i). EPA requests comment on the proposed use of three years as the pay-in period for a trust fund in the absence of a closure plan.

We are proposing to simplify the requirements for the pay-in period for a trust fund for existing facilities seeking coverage under the standardized permit and wishing to use a trust fund to

demonstrate financial assurance. An existing facility whose trust fund's value is less than its closure cost estimate when it receives a standardized permit would have 60 days to increase the value of the trust to the amount of the closure cost estimate. The requirement proposed in § 267.143(a)(3) clarifies that the 60 days will apply both to existing facilities under interim status and under individual permits, regardless of when they obtain a standardized permit. This means that it would effectively have a 60 day pay-in period.

The Agency arrived at this proposed requirement by considering the two classes of existing facilities that could use a trust fund with the standardized permit: those currently operating under interim status (part 265 standards) and those operating under part 264 permits. A facility operating under interim status and using a trust fund must fully fund its trust by July 6, 2002, which is twenty years after the effective date of the § 265.143 standards. See § 265.143(a)(3), and 47 FR 15432. For such a facility, the deadline for a fully funded trust under interim status would probably be close to the effective date of their standardized permit. The effective date of a standardized permit would be after we promulgate this proposed rule in final form, and, in authorized States, after the State has adopted the rule and begun to issue these permits. Therefore, EPA proposes a 60 day pay-in period for an existing interim status facility seeking a standardized permit and using a trust fund to demonstrate financial assurance. This 60 day period is the same deadline facing an interim status facility that must increase the amount of a trust fund after the end of the pay-in period.

A facility that already has an individual permit based on the existing part 264 requirements must fully fund the trust over the term of the initial permit (or over the remaining life of the facility, whichever is shorter). See §264.143(a)(3). Thus a facility that wishes to convert to a standardized permit rather than renew its existing permit should already have funded its trust fully.

A permitted facility using a trust could also decide to convert to a standardized permit before the normal end of its current permit's life by asking to have its individual permit revoked and reissued as a standardized permit. Under existing § 264.143(a)(3), owners or operators must make payments into the trust annually over the "term of the initial permit," or the remaining operating life of the facility, whichever is shorter. This is the "pay-in period" for an existing permitted facility. By terminating its permit early (in order to convert to the standardized permit), the owner or operator in effect terminates the pay-in period. After the pay-in period which would end at the end of the life of the initial Part 264 permit, an owner or operator using a trust must comply with existing § 264.143(a)(6) and maintain within 60 days the value of the trust to at least the amount of the closure cost estimate (or obtain other financial assurance). Therefore the 60 day requirement in the proposed standardized permit regulations is the same as in the current 264 standards.

*Surety Bonds (§ 267.143(b) and (c))*

The proposed rule would allow you to use surety bonds guaranteeing either payment or performance as mechanisms for demonstrating compliance with proposed § 267.143(b) or (c) respectively. As in the existing part 264 subpart H standards, you must also establish a standby trust fund.

*Letter of Credit (§ 267.143(d))*

The proposed regulations would allow you to use an irrevocable standby letter of credit, and a standby trust fund as specified in existing § 264.143(d).

*Closure Insurance (§ 267.143(e))*

Under proposed § 267.143(e), we would allow you to use insurance as a mechanism for demonstrating financial assurance for closure. The requirements of this section reference the corresponding existing requirements in § 264.143(e).

Some companies which do not qualify for the financial test (discussed more fully latter) for any or all of their obligations, have sought to use captive insurance as a method of self insurance. These companies can establish a pure captive insurer subsidiary to provide insurance for the parent company's costs of closure, or third party liability requirements. The pure captive insurance company provides insurance for the parent, and the parent can have direct involvement and influence over the insurance company's major operations such as underwriting, claims management, and investment. We discuss captive insurance in more detail in **Section X B:**

*Financial assurance.*

*Financial Test (§ 267.143(f)) and Corporate Guarantee (§ 267.143(g))*

The proposed regulation in § 267.143(f) would allow the use of a financial test by you or by a corporate guarantor as currently provided in § 264.143(f) though the tests proposed here differ from those currently in effect in parts 264 and 265. We proposed changes to the financial test on July 1, 1991 (56 FR 30201) for owners and operators of treatment, storage and disposal facilities. In addition, on October 12, 1994 (59 FR 51523) we proposed changes to the domestic asset requirement for the RCRA Subtitle C financial test when we proposed a financial test for private owners and operators of municipal solid waste landfill facilities (MSWLFs). It is important to understand how the proposed changes to the financial test could affect the proposed standardized permit rule.

The proposed changes to the financial test would make the test less available to firms more likely to enter bankruptcy. The test would do this by changing the financial test ratios to make the test less available to firms with large debts compared with their cash flow or net worth. However, the proposed test allows firms that pass to assure a higher level of obligations than the current RCRA Subtitle C financial test. Under the current financial test, companies must have tangible net

worth at least six times the amount of the obligations covered, and also at least \$10 million. Firms that pass the proposed test can assure an amount of obligations up to \$10 million less than their tangible net worth.

We anticipate that companies passing the proposed financial test will be much more likely to cover all of their obligations than under the current rule. This occurs because the additive requirement (tangible net worth of at least \$10 million more than the amount of obligations covered) covers a larger amount of obligations than the six times multiple of the current rule. With this in mind, we are seeking public comment on not requiring a firm to prepare a closure cost estimate for units covered by the standardized permit if it passes the financial test and can cover all of its other obligations with the financial test. By all of their other obligations, we mean to include costs for liability, closure, post-closure care and corrective action under RCRA Subtitle C; costs for closure, post-closure care, and, if necessary, corrective action obligations for municipal solid waste landfills under RCRA Subtitle D; closure costs for PCB storage facilities; plugging and abandonment costs for Class I wells under the UIC program; financial assurance obligations for underground storage tanks; financial assurance for actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); and any other environmental obligations (see proposed § 267.143(f)(2)(i)(A)(1)). If such a company could no longer pass the financial test, it would have to prepare a cost estimate and provide a financial assurance mechanism through a third party.

We promulgated a final regulation establishing a financial test for private owners and operators of municipal solid waste landfill facilities April 10, 1998 (63 FR 17706). That financial test differs from the regulatory text in the rule proposed for RCRA Subtitle C facilities. To assist the reader in determining what the proposed financial test for the standardized permit

could look like if we were to adopt the test proposed for Subtitle C and adopted for municipal solid waste landfill facilities, we have included proposed regulatory text in this notice. We could also determine that we would use the financial test currently in existing § 264.143(f), § 264.147(f), and the associated language for the instruments in § 264.151(f) and (g) if we should promulgate the standardized permit rule in final form before promulgating revisions to the RCRA Subtitle C financial test.

In the record keeping and reporting requirements of today's proposal we have proposed the requirements for a special report from the firm's independent certified public accountant consistent with those in existing § 258.74(e)(2)(i)(C) rather than the existing §264.143(f)(3)(i). Under the existing financial test for hazardous waste facilities, we always require a special report from the firm's independent certified public accountant (§ 264.143(f)(3)(i)), even if the data in the chief financial officer's letter come directly from the annual report. The proposed requirement (§ 267.143(f)(2)(i)(C)) would only require a special report from the independent certified public accountant in instances where we cannot verify financial data in the chief financial officer's letter from the firm's financial report. This change could reduce the reporting burden for users of the financial test whose submissions of information could be verified from their audited financial statements, and eliminate for these companies the expense of requiring a letter from the outside auditor. We are interested in comments on the appropriateness of reducing this reporting burden, whether this would also be appropriate for facilities currently regulated under part 264 or 265, and whether this change would significantly reduce the reporting burden and by how much.

Today's proposed regulatory language has some other differences from the current RCRA Subtitle C test regulations. The first is that we do not prescribe language for the chief financial officer's letter as we currently do under § 264.151(f). The advantage of this approach would be

the additional flexibility it provides to facilities that could operate under the standardized permit and who would use the financial test. Another advantage to this approach might be that requiring standard language could make compliance easier, since the chief financial officer would not have to choose the wording of the letter. EPA could also promulgate a final regulation that includes the language requirement similar or identical to that currently in § 264.151. We request information from States and the regulated community on the need for specific language, or whether the current arrangement used in the municipal solid waste landfill regulations (§ 258.74), which does not specify the language of the letter, is appropriate. Second, today's proposed language follows the model of the existing part 258 regulations by giving a separate section for the regulations governing the use of a corporate guarantee.

#### *Use of Multiple Mechanisms*

Under proposed §267.143(h) you could utilize a combination of mechanisms at your facility. In the proposed revisions to the RCRA Subtitle C financial test (56 FR 30201), EPA proposed to allow the combination of the financial test with another mechanism for demonstrating financial responsibility for closure at a single location. We propose to allow this same flexibility for facilities qualifying for the standardized permit.

Under proposed § 267.143(i), if you have multiple facilities with a standardized permit you would be able to use a single mechanism for more than one of your facilities. This provides the same flexibility that owners or operators of facilities with individual permits or interim status facilities have under existing §§264.143 and 265.143.

**11. Post closure financial responsibility.** Because the proposed standardized permit rule would only be available to facilities that can clean close, the proposed standardized permit regulation does not anticipate a need for post-closure cost estimates, or financial assurance for



post-closure care. Similarly there is no need for mechanisms for combining financial assurance for closure and post-closure care. Therefore, the proposed regulations in part 267 do not have provisions reflecting the existing requirements of § 264.144-146.

**12. Liability Requirements.** We are proposing to require financial assurance for third party liability for sudden accidental occurrences. We propose that you have and maintain liability coverage of at least \$1 million per occurrence, with an annual aggregate of at least \$2 million exclusive of legal costs (§267.147(a)). These proposed requirements are the same as for facilities with individual permits, and apply to the facility or a group of facilities. Thus, if the owner or operator of facilities with individual permits had the required liability coverage for them, the addition of facilities under the standardized permit would not increase the dollar amount of the liability coverage.

The proposed mechanisms available for demonstrating financial assurance for third party liability would be the same under the standardized permit rule as for units covered by individual permits. In this proposed rule, we have arranged the mechanisms in the same order as they appear for closure, even though this is different from the order currently in § 264.147. We request comments on whether this makes the regulation easier to follow, or if we should organize proposed § 267.147 in the same order as existing § 264.147. The mechanisms for third party liability would be a trust fund (§ 267.147(a)(1), surety bond (§ 267.147(a)(2), letter of credit (§ 267.147(a)(3), insurance (§ 267.147(a)(4), financial test (§ 267.147(a)(5), or guarantee (§ 267.147(a)(6). Furthermore, we would also allow the use of multiple mechanisms under proposed § 267.147(a)(7), as allowed under existing §264.147(a)(6).

As noted above, we are considering whether to disallow the use of captive insurance as a mechanism for providing financial assurance for closure. However, we believe that liability

requirements are generally better suited to the use of insurance. Insurance is a mechanism for protecting from risk, or the probability that an unfortunate event may occur. Closure is a certain event because an owner or operator (or the permitting authority in the event of the permittee's bankruptcy) will have to close its hazardous waste facility and so the risk only involves the timing of the closure, and not whether it might occur. Because the hazardous waste regulations are designed to protect human health and the environment, a release from a facility that could affect a third party is not a certainty, and in fact, there can be a low probability of a facility having a release that could affect a third party. We request comments on whether pure captive insurance should be treated differently for third party liability where there is a risk of an event occurring than for closure where the risk involves the timing of an event that will occur.

We are proposing that the standardized permit would not be available for land disposal units such as surface impoundments, landfills, land treatment facilities, or disposal miscellaneous units. Therefore, requirements for land disposal units under existing §264.147(b) to maintain third party liability for non-sudden accidental occurrences should not be necessary for standardized permit units. The proposed regulation reserves §267.147(b).

Because the proposed standardized permit is intended to rely upon limited interaction between the permittee and the permitting agency, we believe it would not be appropriate to include the provisions of existing § 264.147(c) and (d). These provisions, respectively, allow the owner or operator to request a variance from the amounts required in §264.147(a), or allow the Regional Administrator to require a different amount. Thus, there are no corresponding provisions in the proposed §264.147 and the corresponding paragraphs are reserved.

Along with the proposed changes to the financial test for closure, we have previously proposed changes to the financial test for liability coverage (56 FR 30201 and 59 FR 51523).

Under the proposed test, we expect that more owners and operators will be able to pass the liability financial test than under the current financial test. We expect that when we promulgate these tests in final form that they would also apply to the standardized permit. We are publishing the language of the proposed liability financial test here for your convenience. If we promulgate the standardized permit rule in final form before final promulgation of the revised RCRA Subtitle C financial test, we may use the current RCRA Subtitle C financial test in the final standardized permit rule.

**13. Other provisions of the financial requirements.** We are proposing that the requirements in existing § 264.148 to notify the permitting authority in the event of a bankruptcy would apply also to the standardized permit (see proposed §267.148). We have also referenced this requirement in proposed § 267.140(c).

Under existing § 264.149, if your facility is in a state where EPA administers the program but the state imposes its own financial assurance mechanism, you may continue to use the state approved mechanism. There are only three states where we administer the program, and we do not expect that these states have their own mechanisms. Therefore, we are not including an analogous provision, and have reserved § 267.149.

In the financial responsibility regulations covering facilities with permits under part 264, States can assume responsibility for an owner or operator's compliance with existing §§ 264.143 and 147 (§264.150). We have included a similar provision (§267.150) in this proposal, but request comment on whether such a provision is appropriate. Do States in fact undertake such responsibilities, and would they for holders of a standardized permit?

The proposed language of §§ 267.143 and 267.147 references existing § 264.151, and would require the use of the language in existing § 264.151. Section 264.151 contains the exact

wording of the instruments used to demonstrate financial assurance. In light of the substantial amount of text in existing § 264.151, we have decided not to propose the creation of a § 267.151. This is similar to our decision not to include the instrument language in the current interim status standards in part 265. We request comments on suggested changes to the language of § 264.151 that we should make for consistency with the proposed standardized permit rule.

## **J. Subpart I - Use and Management of Containers**

The proposed standards for the use and management of containers in this subpart of part 267 are similar to the existing provisions in subpart I of part 264. However, we are proposing conforming changes to reflect the standardized permit rather than the individual permit. We also are proposing changes to make the requirements more readable. We request comments on these changes, and whether additional modifications are warranted.

**1. Would this subpart apply to me?** These proposed standards would apply to you if you own or operate a facility that stores hazardous waste under a standardized permit, except as provided in proposed § 267.1(b). Note that, under existing §§ 261.7 and 261.33(c), if you empty a hazardous waste from a container, the residue remaining in the container is not considered a hazardous waste if the container is “empty” as defined in § 261.7. If the container is “empty” we are proposing that the management of the container would be exempt from the requirements of this subpart.

**2. What standards would apply to the containers?** We are proposing that the requirements of § 267.171 would be the same as standards currently found in § 264.171. This provision would require you, as the facility owner or operator, to transfer hazardous waste from a leaking container to a container in good condition, or otherwise manage the waste in a manner that complies with the proposed part 267 requirements.

Proposed § 267.171 would require that the container be made of materials or lined with materials that will not react with the hazardous wastes being stored. We are proposing this requirement, which is the same as that in existing § 264.172, to ensure that the container is suitable for managing the wastes.

Proposed § 267.171 would further require you to close (keep covered) all containers that store hazardous waste except when necessary to handle the waste, and that care be taken not to rupture the container or somehow create a leak. This proposed provision is the same as the existing § 264.173 standards. Note that the U.S. Department of Transportation regulations, including those in 49 CFR 173.28, govern the reuse of containers in transportation.

**3. What are the proposed inspection requirements?** Section 267.172, as proposed, would require you to inspect at least once a week to check for leaking containers. This proposed requirement is the same as the current § 264.174 provision. If you find a leak, you would need to follow the proposed procedures in §§ 267.15(c) and 267.171.

**4. What proposed standards apply to the container storage area?** Section 267.173, of the proposed rule, specifies the design and operation requirements of a system for containing any leaks, spills, or precipitation. These requirements would apply if you are storing free liquids in the containers. As proposed, they would also apply, even if no free liquids are present, for F020, F021, F022, F023, F026, and F027 wastes. The containment system would need to contain 10 percent of the volume of all the containers or the volume of the largest container, whichever is greater. Also, you would need to prevent run-on to the storage area unless the containment system is large enough to contain that container volume and the run-on. You would need to remove any spills or leaks as soon as possible to avoid overflowing the containment system. These proposed provisions are the same as the requirements in existing § 264.175.

Note that if the collected material is a hazardous waste under part 261 of this chapter, we are proposing that you must manage it as a hazardous waste in accordance with all applicable requirements of parts 262 through 266 of this chapter. If the collected material is discharged through a point source to waters of the United States, it would be subject to the requirements of section 402 of the Clean Water Act, as amended, under our proposed rule.

**5. What special requirements would I need to meet for ignitable or reactive waste?**

Under proposed § 267.174, we would require that you store ignitable or reactive waste no closer than 50 feet from your facility's property line. The general requirements proposed in § 267.17(a) provide additional requirements for ignitable or reactive wastes. This proposed standard is the same as the provision currently in § 264.176.

**6. What special requirements would I need to meet for incompatible wastes?** Under proposed § 267.175, we would stipulate that you cannot place incompatible wastes in the same container. This provision would also apply to an unwashed container that previously held an incompatible waste. The exception to this prohibition is found in proposed § 267.17(b), which would stipulate precautions that you would need to take if you have to mix incompatible wastes.

Section 267.175, as proposed, would further require that you physically separate incompatible wastes from other wastes and protect them with barriers such as dikes, berms, or walls. The purpose of this proposed section is to prevent fires, explosions, gaseous emissions, leaching, or other discharge of hazardous waste or hazardous waste constituents which could result from the mixing of incompatible waste or materials if containers break or leak. All of these proposed provisions are the same as the existing § 264.177 requirements.

**7. What would I need to do when I want to stop using the containers?** Section 267.176, as proposed, would require clean closure of the facility. This proposed requirement

would require you to remove all hazardous waste and residues and to decontaminate or remove all components that came in contact with the hazardous wastes, including soils. These proposed requirements are the same as the existing provisions in § 264.178. Under our proposal, unless you can demonstrate, following § 261.3(d), that the solid waste removed from the containment system is not a hazardous waste, you would become a generator of hazardous waste and would need to manage it in accordance with all applicable requirements of parts 262 through 266 of this chapter. This provision would apply to any solid waste you remove from the container system during closure as well as during the operating period.

**8. What air emission standards are proposed?** We are proposing that the air emission standards in § 267.177 be similar to those currently in § 264.179. Under the proposed rule, you would need to comply with the requirements of subparts AA, BB, and CC of part 264. There is a one notable difference between proposed § 267.177 and the current § 264.179. Section 267.177, as proposed, would only allow the following control devices: thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit. This is because performance testing and reporting is required in part 264 subpart AA and BB to support alternative control devices. This requires close interaction on the part of the facility owner/operator and the permitting agency. Because this proposed rule is intended to reduce the burdens of such interactions, we have chosen to limit the type of control devices. We welcome public comment on this decision.

## **K. Subpart J - Tank Systems**

We believe that most of the tank system standards in subpart J of part 264 would be appropriate for tank units operating under a standardized permit. However, some provisions in today's proposed tank requirements are different from those in part 264. Today's proposal would

require secondary containment for all tank systems managing free liquids, with no provisions for waivers. The waiver provision in the part 264 standards requires significant work on the part of you, as the facility owner or operator, to justify that secondary containment is not necessary. It also requires that the permitting agency review the waiver demonstration and determine its appropriateness. The close review and exchange of materials taking place during the waiver process do not fit the intent of the standardized permit. Part of our premise in developing the standardized permit is that a high level of interaction between the permittee and the permitting agency is not necessary. In addition, our experience is that few owners or operators have availed themselves of this waiver provision. We welcome public comment on this topic.

We are not requiring integrity testing for tanks managing free liquids and operating under a standardized permit because we would require secondary containment. Under the existing part 264 tank standards, we only require tanks that don't have secondary containment to undergo annual integrity testing. Also, we are proposing that the standardized permit only apply to above ground or on ground tanks (for example, tanks raised off the ground or resting on a pad or the ground surface). Therefore, as proposed, underground or in-ground tank systems would not be eligible for a standardized permit. This is because we would rely on inspections to ensure compliance with the standardized permit. Underground and in-ground tank systems are inherently harder to inspect than above ground or on ground tanks. We are soliciting comments on the merits of excluding underground and in-ground tank systems from obtaining standardized permits.

Finally, as explained above in the preamble for subpart G, you would be required to clean close all units at the facility. We believe that a properly designed, constructed, and operated tank system with secondary containment should always be able to clean close with minimal unforeseen contingencies.



**1. Would this subpart apply to me?** Subpart J of part 267 would apply to you if you own or operate a facility that treats or stores hazardous wastes in above ground or on ground tanks under a standardized permit. We would, however, provide exemptions from some requirements of subpart J for special situations. Specifically, the requirement for secondary containment, as specified in § 267.195, would not apply to you if you have tanks that do not contain free liquids and are inside of a building or for tanks or sumps that you are using as secondary containment. All other tanks that manage hazardous waste, whether it's a free liquid or not, would require secondary containment.

**2. What are the proposed design and construction standards for new tank systems or components?** The proposed § 267.191 provisions differs from existing § 264.192 requirements in several areas. First, under the proposed standardized permitting process there would be no "part B application" therefore we did not include any references to the part B application in the proposed § 267.191 standards. Under this section, you would still be required to obtain a written assessment, reviewed and certified by an independent, registered professional engineer, attesting to the structural integrity and acceptability of tank system. However, instead of requiring you to submit this estimate to the Regional Administrator, this section would require you to retain it at your facility. The assessment would be required to show that the foundation, structural support, seams, and connections are adequately designed and that the tank system has sufficient structural strength to ensure that it will not collapse, rupture or fail. The design and construction requirements in proposed § 267.191 would be the same as the current § 264.192 provisions. However, the proposed requirements in proposed § 267.191 differ from the part 264 standards in that facilities with underground tank systems or components not be eligible for a standardized permit. Therefore, we would not be carrying over the existing provisions in §§ 264.192(a)(4) and

264.192(c) in today's proposal. The Agency invites comments on whether we should allow underground piping connecting above ground or in-ground tank systems under a standardized permit. The proposed regulations in the part 267 tank standards do not allow any underground tank components, including piping. If, in the final rule, the Agency chooses to include underground tanks, part 267 would include provision similar currently found in § 264.192.

**3. What are the proposed handling and inspection requirements for new tank systems?** Proposed § 267.192 retains the same requirements as existing § 264.192(b). You would be required to follow these requirements during the installation phase of the new tank system to ensure that the integrity of the system is maintained.

**4. What testing would be required?** As with existing § 264.192(d), you would be required to test for leaks as proposed in § 267.193.

**5. What installation requirements would be required?** In addition to the general requirements proposed in § 267.192 and § 267.193 regarding installation, you would be required to follow the specific installation requirements proposed in § 267.194. These are the same requirements found in existing 264.192(e), (f), and (g).

**6. What are the proposed preventative requirements for containing a release?** The proposed § 267.195 standards would require secondary containment and a leak detection system for all tank systems (except indoor tanks that do not contain free liquids.) Neither the age of the tank nor the waste it contains would be taken into consideration when deciding when a tank needs secondary containment; the secondary containment requirement would apply to all new and existing tanks for which you would be seeking a standardized permit. All proposed design, installation, and operating requirements of § 267.195 are identical to the current provisions § 264.193, except for the current part 264 requirement to submit a demonstration to the Director

when the leak detection and removal system cannot detect a leak within 24 hours of it occurring. Instead, you would self-certify and document that a leak or spill cannot be detected and/or removed within 24 hours. You would keep this documentation on-site and make it available for review by the permitting agency.

**7. What are the proposed devices for secondary containment and what are their design, operating, and installation requirements?** Proposed § 267.196 lists the specific devices that you would be required to use in providing secondary containment, as well as the design, operating, and installation requirements for each one. These requirements are the same as those in existing § 264.193 (d) and (e).

**8. What are the proposed requirements for ancillary equipment?** The proposed requirements for ancillary equipment in § 267.197 are the same as the existing provisions in § 264.193 (f). We have retained the requirement for secondary containment for all ancillary equipment, such as piping, valves and pumps. We have also retained the exemption from secondary containment for four particular situations.

**9. What are the proposed general operating requirements for tank systems?** The proposed requirements in § 267.198 are identical to those currently in § 264.194. This section stipulates that you manage your tanks to prevent the tank system from rupturing, leaking, corroding, or failing in any manner. Also, proposed § 267.198 specifies controls and practices for preventing spills and overflows from occurring. It includes spill prevention controls, overfill prevention controls, and the maintenance of freeboard in uncovered tanks.

**10. What are the proposed inspection requirements?** The inspection requirements of proposed § 267.199 are the same as current provisions in § 264.195, noting, however, that today's proposed part 267 standards apply to above ground tank systems only. You would be required to

inspect your tank system daily to detect corrosion or releases and to check data from monitoring and leak detection equipment. These provisions would also require you to inspect any cathodic protection systems on a regular schedule. Note that proposed § 267.15(c) would require you to fix any deterioration or malfunction that you find. Further, proposed § 267.200 would require you to notify the Director within 24 hours of confirming a leak, and 40 CFR part 302 and part 355 may require you to notify the National Response Center or state and local emergency responders of a release. You would be required to document all inspections in your facility's operating record.

**11. What would I do in case of a leak or a spill?** Proposed § 267.200 specifies the procedures you would be required to follow in the event of a leak or spill from a tank system or secondary containment system, or if a tank system or secondary containment system is unfit for use. The proposed § 267.200 provisions are similar to the current requirements found in § 264.196 with a few modifications. We did not propose in § 267.200 the current provisions of § 264.196 related to releases from a tank system without secondary containment because all tank systems operating under a standardized permit would be required to have secondary containment.

The proposed § 267.200 provisions require that, in the case of a leak or a spill you would be required to immediately remove the tank systems or secondary containment systems from service. These provisions also identify the steps you would be required to take to stop the flow of hazardous waste and find the source of the release, and to remove the released waste within 24 hours. You would have to report any releases to the Director within 24 hours of detection. We have included in this section the same exception that is currently available in § 264.196 for reporting small releases that you clean up quickly. The proposed § 267.200 provisions would require you to submit a more detailed report on any release to the environment to the Director within 30 days of the release. This section would also requires you to close the tank system unless

you satisfy specified repair requirements. Any major repairs must be certified by an independent, qualified, registered, professional engineer, in accordance with § 270.11(d), before you return the tank system to service.

**12. What would I do when I stop operating the tank system?** When you stop operating the tank system you would be required to clean close it. The proposed § 267.201 requirements differ from § 264.197 standards in two important areas. As stated earlier, we are not proposing to allow any waivers from secondary containment for tank systems operating under a standardized permit. Therefore, we would not carry over the existing § 264.197 provisions for closing a tank system that does not have secondary containment to proposed § 267.201. Another important difference is that if you cannot clean close a tank system, you would be required to close it as a landfill under part 264. Therefore, you would have to submit a RCRA part B application described in § 270.14 and follow the RCRA individual permitting process to obtain a post-closure permit.

**13. What are the proposed special requirements for ignitable or reactive waste?** The proposed § 267.202 provisions are the same as the existing § 264.198 standards. This section would require special handling of ignitable or reactive wastes before you can store them in tanks. The section would require that you: 1) manage the wastes so that they are no longer ignitable or reactive (before or after being placed in the tank); 2) store or treat the waste to prevent the waste from igniting or reacting; or 3) use the tank system strictly for emergencies. Additionally, you would be required to adhere to all requirements for maintenance of protective distances as specified in the National Fire Protection Association's "Flammable and Combustible Liquids Code."

**14. What are the proposed special requirements for incompatible wastes?** Proposed §

267.203 stipulates, as does existing § 264.199, that you could not place incompatible wastes in the same tank system, or in a tank system that previously held an incompatible waste and has not been decontaminated, unless you follow the provisions proposed in § 267.17(b). Proposed § 267.17(b) specifies precautions that you would be required to take if you have to store incompatible wastes in the same tank system.

**15. What air emission standards are proposed?** Proposed § 267.204 contains similar requirements to those currently in § 264.200 for complying with subparts AA, BB, and CC of part 264 of this chapter. There is one notable difference between proposed § 267.204 and existing § 264.200. Proposed § 267.204 only allows the following control devices: thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit. This is because performance testing and reporting is required in part 264 subpart AA and BB to support alternative control devices. This requires close interaction on the part of the facility owner/operator and the permitting agency, which is not appropriate for the standardized permit.

#### **L. Subpart DD - Containment Buildings**

The Agency is proposing to adopt most of the design and operating requirements for containment buildings in part 264 directly into the standardized permit standards of part 267. However, we are proposing changes to several of the existing part 264 requirements as we tailor the analogous part 267 requirements to the standardized permit. First, containment buildings that would be managing free liquids would need to have secondary containment measures in place. You would not be allowed to delay the installation of secondary containment measures. As with the secondary containment requirement for tanks, we believe that the part 264 secondary containment waiver demonstration and its subsequent review by the permitting agency does not fit

with the intent of the standardized permit. We are, however, proposing to retain the provision that allows you to request a waiver if the only liquids in the building are the result of required dust suppression measures. Another change from the part 264 standards that we are proposing would be to require clean closure of containment buildings. We believe if your containment buildings have secondary containment, and they are properly designed, constructed and operated, you should be able to clean close them with minimal problems.

**1. Would this subpart apply to me?** This subpart would apply to you if you own or operate a facility that stores or treats hazardous wastes on-site in containment buildings. As with the current requirements in subpart DD of part 264, if the unit was designed and operated according to proposed § 267.1101, you would not be subject to the land disposal restrictions in RCRA section 3004(k).

**2. What are the proposed design and operating standards for containment buildings?** Proposed § 267.1101 stipulates design and operating standards similar to those currently in § 264.1101. We are proposing specific design requirements for floor, walls, doors, and windows, as well as for the primary barrier which would come in contact with the waste.

**3. What additional design and operating standards would apply if liquids will be in my containment building?** If you plan to use your containment building to treat or store hazardous wastes that contain free liquids, then the primary barrier would be required to be able to prevent the migration of hazardous constituents into the barrier. You could accomplish this, for example, by putting a geomembrane on top of a concrete surface. You would also be required to install a secondary containment system. The function of the secondary containment would be to allow the use of a leak detection system capable of detecting leaks in the primary barrier, and to collect the liquids that could penetrate the primary barrier. Proposed § 267.1102 stipulates the same design

requirements for the secondary containment system as does existing § 264.1101. This proposed section would also require a certification by a qualified registered professional engineer that the unit meets all design and operating requirements.

The existing § 264.1101 provisions allow you to delay implementation of secondary containment for existing containment buildings and describe the process for granting the delay. We are not proposing such a delay for containment buildings under a standardized permit. We believe that, in the interest of streamlining the standardized permitting process, the permitting agency should not have to review any demonstrations. The standardized permitting process does not provide for an iterative process of submitting a demonstration for a waiver, and responding to comments.

**4. What are the proposed other requirements to prevent releases?** The proposed § 267.1103 would require you to use certain controls and practices to make certain any hazardous waste stored in your containment building does not leave the building. These are the same requirements currently in § 264.1101(c). These requirements include maintenance of the primary barrier and of the height of the waste in relation to the wall height. Also, you would be required to take measures to prevent tracking of the waste by personnel and equipment, including decontamination procedures. Finally, this section would require methods of containing fugitive emissions so that you could meet a “no visible emissions” standard.

**5. What would I do if I detect a release?** The proposed § 267.1106 provisions specify procedures for responding to releases of hazardous waste that are the same as those currently in § 264.1101(c)(3). These procedures would require you to enter all such incidents in your facility’s operating record, and to notify the Regional Administrator both of the release and of the repairs.

**6. What would I do if my containment building contains areas both with and without**



**secondary containment?** Proposed § 267.1105 addresses those buildings with areas where you would manage wastes with free liquids and areas where you either would manage wastes without free liquids or you would have a waiver from secondary containment requirements in proposed 267.1104. For buildings with this type of “mixed use”, you could construct a portion without secondary containment. The requirements in proposed § 267.1105, which are the same as those currently in § 264.1101(d), and are designed to prevent migration of the wastes that require secondary containment to the areas that do not.

**7. Could a containment building be considered secondary containment for other units?**

Proposed § 267.1107 addresses the specific instance of a tank being inside of a containment building. In this situation, the containment building would be the secondary containment system for the tank if it meets the proposed requirements of § 267.1107. This provision is the same as currently in § 264.1101(b)(3)(iii).

**8. How would I obtain a waiver from secondary containment requirements?** Proposed § 267.1104 would allow for a waiver from secondary containment if the only liquids in the building were a result of required dust suppression and you could assure the containment of liquids and wastes without secondary containment. This would be the only waiver from secondary containment. We are providing it because we believe you could easily make the demonstration without an iterative process with the permitting agency. This is the same waiver allowed currently in § 264.1101(e).

**9. What would I do when I stop operating the containment building?** The proposed § 267.1108 closure provisions would require the clean closure of containment buildings. This is similar to the proposed standardized permit requirements for container storage areas and tanks. During closure of the containment building, you would have to remove or decontaminate all waste

residues from subsoils and containment system components. You should have no problem meeting clean closure requirements for a properly designed and operated containment building. However, if for some reason you cannot clean close your facility, you would be required to submit a part B application for an individual post-closure care permit for closure as a landfill. We discussed this before in more detail in **Section VII H: Subpart G - Closure**.

## **VIII. Conforming Permit Changes to Part 270**

### **A. Overview of Proposed Part 270 Changes.**

We are proposing to modify the hazardous waste permit program requirements by adding a new type of permit: the standardized permit. The hazardous waste permit program requirements are in part 270. This part of the RCRA hazardous waste regulations contains specific requirements for permit applications, permit conditions, changes to permits, expiration and continuation of permits, interim status, and special forms of permits.

Under the existing hazardous waste permitting system, facility owners and operators must obtain an “individual” permit based on site-specific information in order to manage hazardous waste. We briefly described the existing individual permitting system in **Section I D 1: What are the steps in Obtaining an Individual Permit?**. As previously discussed, we propose allowing standardized permits for certain types of hazardous waste management activities: the storage and non-thermal treatment of hazardous waste in tanks, containers, and containment buildings at facilities that generate the waste. We are proposing to add § 270.67 to part 270 subpart F and to add part 270 subpart I that would allow a special form of permit, a RCRA standardized permit.

We request comment on the changed sections and added sections of part 270 rules. As noted previously, however, we are not reopening the existing regulations to public comment, except those provisions explicitly modified by this proposal.

## **B. Specific Changes Proposed for Part 270.**

We are proposing certain ancillary changes to other sections of part 270 to ensure we have fully incorporated the standardized permit into the existing regulations. These include: proposed changes to § 270.1 (b) *Overview of the RCRA Permit Program*, § 270.2 *Definitions*, § 270.10(a) *Applying for a permit*, § 270.10(h) *Reapplying for a permit*, § 270.40 (a) and (b) *Transfer of Permits*, § 270.41 *Modify or revoking and reissuing permits*, and § 270.51 *Continuation of expiring Permits*.

**1. Overview of the RCRA program.** We are proposing to add a sentence to § 270.1(b) that briefly mentions that a facility that treats or stores hazardous waste on-site could be eligible for a standardized permit.

**2. Definitions.** We are proposing to add “standardized permit” to the definition list in § 270.2. This definition for standardized permit is the same definition that we are proposing to add to part 124: “Standardized permit means a RCRA permit authorizing management of hazardous waste under part 124 subpart G and part 270 subpart I. The standardized permit may have two parts: a uniform portion issued in all cases and a supplemental portion issued at the Director’s discretion.” We are also proposing to modify the definition of “permit” to include a standardized permit.

**3. Permit applications.** We are proposing to modify § 270.10(a) to make it more readable and to add a sentence to the *Permit application* section clarifying that the procedures for application, and issuance of a standardized permit are in part 124 subpart G and part 270 subpart I. However, as noted in Table 5: *Permit program comparison*, many of the current part 270 permit administration requirements would still be applicable for the standardized permit.

**4. Permit reapplication.** We are proposing to modify § 270.10(h) to make it more

readable and to take into account the standardized permit. If your facility is operating under an individual permit and manages waste on-site in tanks, containers, or containment buildings, then you could meet the reapplication requirement for these units by submitting a notice of intent to operate under a standardized permit at least 180 days prior to expiration of your individual permit. Likewise, if your facility is operating under a standardized permit, you would submit a notice of intent at least 180 days before the expiration date of the permit.

**5. Transfer of permits.** We are proposing to make changes to § 270.40 (b) that would allow transfer of a standardized permit to a new owner or operator. The change to this paragraph adds applicable reference to §§ 270.320 and 124.212. A transfer of a standardized permit to a new owner or operator would qualify as a routine permit modification and would follow appropriate procedures for this category of standardized permit modification.

**6. Modification or revocation and reissuance of permits.** We are proposing to make two changes to § 270.41. First, we would add a reference to § 270.320, which includes the requirements for modifying standardized permits. Also, we are proposing a new paragraph (b)(3) which would specify another reason for revocation and reissuance of a permit. This new paragraph would apply where a facility owner or operator with an individual RCRA permit wishes to operate under a standardized permit. This was discussed earlier in **Section III B: *How would I Switch from an Individual Permit to a Standardized Permit.*** Under this situation, you would request revocation of the individual permit and issuance of a standardized permit. The causes for modification (§ 270.41(a)), modification or revocation and reissuance (§ 270.41(b)), and facility siting (§ 270.41(c)) that apply to an individual permit would also apply to a standardized permit.

**7. Continuation of expiring permits.** We are proposing to modify § 270.51 by adding a

new subsection (e) which discusses continuation of expiring standardized permits. This new paragraph is similar to the requirements in existing § 270.51(a) except we have replaced references to the permit, permit application, and §§ 270.14 through 270.29 citations with references to the standardized permit, notice of intent, and part 124 as appropriate. We are proposing this provision under the authority of the Administrative Procedures Act (APA).

We are also proposing to add paragraph (2) to this subsection because we want to give you the opportunity to continue to operate under an existing permit if you submit an individual permit application following the Regional Administrator's decision that you are not eligible for a standardized permit.

Under this paragraph, you would be able to continue to operate by submitting an application for an individual permit within 60 days of the Director giving you notice of your ineligibility for the standardized permit. This would be the case even if the Director provides the notice after your previous permit has expired. Under this proposed scheme, as long as your reapplication for a standardized permit is timely, you would qualify under the APA and § 270.51 for an administrative continuance of the permit. We view the later reapplication for an individual permit as simply a part of the ongoing reapplication process.

**8. Standardized permit.** As discussed above in **Section I C: *What is the Agency's Proposal***, we are proposing to add a new type of permit (e.g. "standardized permit") to part 270 subpart F: Special Forms of Permits. Section 270.67 contains the general statement allowing the permitting authority the ability to issue standardized permits.

## **IX. RCRA Standardized Permits**

### **A. General Information about Proposed Standardized Permits.**

In proposed §§ 270.250 and 270.255, we describe what a proposed standardized permit is

and who would be eligible for one. This has been discussed earlier in **Section I C: *What is the Agency's Proposal.*** Although proposed regulatory language on these two topic is already in part 124 and 267, we have repeated these requirements in part 270 to give Subpart I better context.

In proposed § 270.260, we describe what sections and subparts of part 270 would be applicable to standardized permits. Table 5 offers a comparison of the hazardous waste permit program provisions of part 270 that are applicable to individual permits and proposed standardized permits. Most of the part 270 requirements applicable to individual permits would also be applicable to standardized permits except where noted in Table 4 and proposed § 270.260.

**Table 5: Comparison of the Provisions of the Individual Permit Program and the Proposed Standardized Permit Program**

	Individual Permits	Proposed Standardized Permits
<b>General Information:</b>		
Definitions	U	U
Consideration under Federal laws	U	U
Effect of permit	U	U
Noncompliance and reporting program by the Director	U	U
<b>Permit Application:</b>		
General application requirements	U	U
Special form of permit procedures specific to standardized permits		U
Confidentiality of information	U	U
Signatories on permit application and reports	U	U
Contents of part A of permit application	U	U
Contents of Part B of permit application submitted	U	
Permit information kept at facility		U
Permit Denial	U	U
<b>Permit Conditions</b>		
Conditions Applicable to all permits	U	U
Requirements for recording and reporting of monitoring results	U	U

	Individual Permits	Proposed Standardized Permits
Establishing permit conditions	U	U
Schedule of compliance	U	U
<b>Changes to Permits</b>		
Transfer of permits	U	U
Modification or revocation and reissuance of permits	U	U
Permit modification requirements	U	
Special modification requirements for standardized permits		U
Termination of permits	U	U
<b>Expiration and Continuation of Permits</b>		
Duration of permits	U	U
Continuation of expiring permits	U	U
<b>Interim Status</b>		
Qualifying for interim status	U	U
Operation during interim status	U	U
Changes during interim status	U	U
Termination of interim status	U	U

## **B. What Information would I Need to Submit to Support My Standardized Permit Application?**

We are proposing that you submit certain information to the permitting authority. Under proposed § 270.275, you would submit with the notice of intent: (1) The part A information



required by § 270.13, (2) A meeting summary and other materials required by § 124.31, (3) Documentation of compliance with the location standards of § 267.18 and § 270.14(b)(11), (4) Information that allows the Director to carry out our obligations under other Federal laws as required by § 270.3, (5) Solid waste management unit information § 270.14(d), and (6) A certification meeting the requirements of proposed § 270.280.

**1. RCRA Part A application information.** Section 270.275(a) would require you to submit the information required by § 270.13. This information is the general Part A application information required currently from all facility owners or operators seeking a RCRA individual permit. The Part A information includes: (a) general information on the hazardous waste management activity requiring a permit, the name and mailing address of your facility along with its latitude and longitude, (b) SIC codes that best reflect the products or services your facility provides, (c) the operator's name, address, phone number, and the ownership status of the facility, (d) the owner's name, address, and phone number, (e) whether your facility is located on Indian lands, (f) an indication of whether your facility is new or existing, (g) for existing facilities, a scale drawing showing past, present and future waste management areas along with photographs clearly delineating waste management structures, (h) a description of the processes you use to manage the waste, (i) a specification of the hazardous waste you treat or store at the facility, (j) an estimate of volumes of hazardous waste your facility manages annually, (k) a listing of all permits approved or applied for including federal and state Permits, (l) a topographic map which extends at least 1 mile beyond the facility boundary in all directions and indicates the location of the facility, the waste management areas, surface waters, and drinking water wells, and (m) a description of nature of the business. We published a document, *RCRA Part A Permit Application* (EPA form 8700-23 (October 1999)), which describes the Part A application in detail and includes

instructions for filling out the application form. You would be able to comply with proposed § 270.275(a) requirements by attaching a completed EPA Form 8700-23 or State equivalent form to the notice of intent to be covered by the standardized permit.

**2. Preapplication meeting summary.** Proposed § 270.275(b) would require you to submit a copy of the meeting summary and ancillary materials required by § 124.31. This is the pre-application meeting that you host with the community before submitting a Notice of Intent. This meeting is also required if you are seeking an individual RCRA hazardous waste permit. As discussed above in **Section III A 1: *Conduct a pre-application meeting with the community***, the meeting should provide an informal occasion for you and the public to share ideas, educate each other, and start building the framework for a working relationship. We encourage you to address topics such as: the type of facility, the location, the types of waste generated and managed, and waste minimization and pollution control measures. You would submit a summary of the meeting, along with a list of the attendees and their addresses, and copies of any comments or materials submitted at the meeting.

**3. Compliance with location standards.** We are proposing under § 270.275(c), that you submit documentation that your facility is in compliance with the location standards described in § 267.18 and § 270.14(b)(11). We believe that the location of a facility is an important site-specific aspect of safe waste management. Therefore, we propose to continue to require the submittal of the documentation of compliance with the location standards. This documentation would include several analyses.

First, if you have a new facility, you would have to determine the applicability of the seismic standard by checking if your facility is in a political jurisdiction listed in the regulations at appendix VI of part 264. The demonstration should show no recent faults are present within 3000

feet of the facility. If you find evidence of a recent fault, then your demonstration would need to show that no fault exists within 200 feet of an area where you are going to manage waste.

Second, you (whether your facility is new or already existing) would need to determine whether your facility is located in a 100-year floodplain. If your facility is in a 100-year floodplain, you would provide information on engineered structures which are designed to prevent washout or emergency procedures to remove hazardous waste to safety prior to flooding.

**4. Compliance with other Federal laws.** We are proposing in § 270.275(d) that you submit information necessary for the Regional Administrator to carry out his/her duties under other federal laws as required by existing § 270.3. This requirement is similar to the provision found in § 270.14(b)(20). Specifically, the Regional Administrator would need to meet various obligations under several Federal laws: the Wild and Scenic Rivers Act. 16 U.S.C. 1273 et. seq., the National Historic Preservation Act of 1966. 16 U.S.C. 470 et seq., the Endangered Species Act. 16 U.S.C. 1531 et seq., the Coastal Zone Management Act. 16 U.S.C. 1451 et seq., and the Fish and Wildlife Coordination Act. 16. U.S.C. 611 et seq. You should discuss with the Regional Administrator the specific information that you would need to submit with your notice of intent for him/her to meet the obligations of these federal laws. Failure to submit this information could either significantly delay the issuance of the standardized permit or result in denying the standardized permit and requiring you to obtain an individual RCRA permit.

**5. Solid waste management units.** Under current regulations in § 270.14(d), permit applicants must include certain information about solid waste management units in their permit applications. Under the approach we are proposing today, you would need to submit this information to the permitting agency. As discussed in **Section VII G: Subpart F - Releases from Solid Waste Management Units**, corrective action requirements depend on site specific

circumstances. The information that would be required to be submitted on solid waste management units includes: (1) the location of the unit on the facility topographic map; (2) a designation of the type of unit (e.g., storage, treatment, disposal); (3) a description of the general dimensions and structure of the unit, with any available drawings; (4) the dates over which the unit was operated; (5) to the extent available, a list of the types of wastes that have been managed in the unit; and (6) all available information pertaining to any releases of hazardous wastes or hazardous constituents from the unit. We would use this information to make decisions about the specific types of corrective actions, if any, that might be necessary to protect human health and the environment at your facility.

We believe that most of the facilities which would operate under a standardized permit are currently operating under RCRA interim status or an individual RCRA permit, and so would have already completed a RCRA Facility Assessment. Therefore, you should have this information available for all solid waste management units at your facility. In situations where you do not have this information available when you apply for a standardized permit, we will either develop the information (e.g., by conducting a RCRA Facility Assessment) or may require you to develop and submit it prior to issuing your permit.

**6. Certification of compliance with proposed Part 267 requirements.** Proposed § 270.275(f) would require you to submit a certification meeting the requirements of proposed § 270.280. Submittal of this certification would put you on record that you understand your obligation to comply with all the proposed requirements of Part 267.

### **C. What are the proposed Certification Requirements?**

**1. Certification of Compliance.** Proposed § 270.280 would require you to certify that your facility is either in compliance with all applicable proposed requirements of part 267 or

would come into compliance with all applicable requirements. You would also certify that you would continue to remain in compliance with proposed Part 267 during the term of your permit. The Resource Conservation and Recovery Act (RCRA) provides for severe penalties for submitting false information on application forms. If you knowingly submit false information or make a false representation you would be subject to significant monetary penalties and possible imprisonment. The proposed certification that you would be in compliance with proposed part 267 requirements would apply to new facilities and existing facilities currently operating under interim status or an individual RCRA permit. Your certification would be based on an internal audit of your facility's operations. You would submit the certification of compliance along with a copy of the audit to the Director.

We are aware that the level of detail in compliance audits can range from the very general to the very specific. Although we don't expect the audit reports to consist of only a few pages of findings, they should not involve extensive documentation. The audits should be comprehensive and the reports should include supporting materials such as completed audit checklists. We expect to issue guidance on audit reporting concurrent with issuance of the final rule.

We are asking for public comments on the benefits of such an audit and whether the audit should be performed by an independent third party. Our current proposal allows the facility owner or operator to perform the compliance audit.

**2. Certification of availability of information.** Proposed § 270.280 also would require you to certify that the information required by proposed §§ 270.290 - 270.315 would be available at your facility for review by the public and the permitting authority. This would be a major departure from the existing RCRA permitting program. Under the proposed standardized permit, you would not have to submit most of the information contained in individual RCRA permit Part B

applications currently required by § 270.14. Instead of submitting detailed Part B type information to the permitting authority, you would retain this information on-site at your facility. Furthermore, you would certify when submitting the notice of intent to be covered by a standardized permit that the Part B type information would be available for on-site review by the public and the permitting agency.

As previously mentioned, we are not proposing to require you to submit the waste analysis plan with your notice of intent because of the relatively simple waste management practices that take place at the proposed type of facilities eligible for a standardized permit. We do not feel that it would be necessary for you to submit the waste analysis plan with the notice of intent or for the permitting agency to review the waste analysis plan prior to permit issuance. However, we are interested in the public's views on the submittal of the waste analysis plan. Specifically, are there waste management situations that may occur at an on-site hazardous waste treatment or storage facility that warrant the review of the waste analysis plan prior to permitting the facility? For example, does a waste analysis plan for a large facility with many different waste streams warrant prior review? We encourage the public to provide detailed descriptions of any situation that they are aware of in their comments to us.

**3. What happens if my facility is not in compliance with the proposed part 267 requirements at the time I submit my Notice of Intent?** Your standardized permit would not be issued until you are in compliance with proposed part 267 requirements. If your facility is not in compliance with applicable part 267 requirements when you submit your notice of intent, you would submit a certification stating that your facility would come into compliance and provide a schedule detailing when your facility would achieve compliance with applicable requirements. Your suggested schedule would be required to meet the requirements of existing § 270.33 and

include an enforceable sequence of actions with specific milestones. The milestones should clearly delineate when compliance would be attained for each proposed part 267 requirement that your facility would currently not be in compliance with. Delay in coming into compliance with applicable regulations would delay issuance of the standardized permit and could be a reason for the Director to extend the 120 day time period for making a draft permit decision (see **Section IV: Issuing a Standardized Permit**). A poor compliance history could also contribute to a Director's decision to not allow coverage under the standardized permit.

**D. What Information would be Required to be Kept at my Facility?**

We are proposing that information that you would normally submit to the permitting agency in a Part B permit application be kept at your facility. The specific information that you would keep at your facility would be based on the general and specific Part B permit application requirements currently found in §§ 270.14 - 270.27.

We are proposing that you keep this information at the facility (and make it available for review by agency inspectors and the public) instead of submitting it to the permitting agency. We expect that you would consolidate the information in one area at the facility to the extent practicable to facilitate access. Maintaining the information on-site would streamline the administrative permitting process and should shorten the time required to obtain a RCRA permit, without lessening the environmental protection provided by the permit. There could be some situations where people in the community may need special access to the information (i.e., beyond having it available on-site). For example, there could be facility safety issues that necessitate the information being kept at an off-site location. To address these situations, we propose to apply the information repository requirements codified in existing §§ 124.33 and 270.30(m) to standardized permits. In other words, the permitting agency could require you to set up and maintain an

information repository, and keep it up to date with information relevant to the standardized permit. Although you could initially choose the location, the Director could override your choice. The Director would have final say in where the repository is established and could require it to be located at an off-site location, such as a public library. We would not require that the information be maintained off-site in all cases. As discussed in **Section I: Overview and Background**, waste management activities at facilities eligible for the standardized permit have traditionally posed relatively less risk than other types of management activities, so we anticipate that people in nearby communities would generally not object to going to the facility to review the information.

**1. General facility information.** The proposed requirements in § 270.290 are the same as the existing § 270.14(b) requirements with minor exceptions. We believe that it is appropriate to clearly articulate the information requirements with which facility owners or operators would have to comply. Therefore, we repeat many of the general information requirements of existing § 270.14(b) verbatim in these proposed § 270.290 requirements. We made minor changes in the requirements to make appropriate citation changes and for readability reasons. Existing part 264 citations were in most cases changed to part 267 citations.

You will notice that there is no parallel reference in proposed paragraph § 270.290(c) to existing § 264.13(c) as there is in existing § 270.14(b)(3) because § 264.13(c) is applicable to facilities treating or storing waste generated off-site. As discussed previously, the proposed standardized permit is only applicable to on-site facilities. Also, we did not include several of the inspection schedules currently required by § 270.14(b)(5) in proposed § 270.290(e) because they are for units not eligible for the proposed standardized permit (e.g. surface impoundments, landfills, waste piles, land treatment unit, and miscellaneous units). In addition, you would be required to submit the facility location information currently required by § 270.14(b)(11) with



your Notice of Intent. Therefore, we are proposing to reserve § 270.290(k) in order to maintain the parallel structure between this section and existing § 270.14(b). We have omitted several of the regulatory citations in existing § 270.14(b)(13) from proposed § 270.290(m) because they are for units not eligible for the proposed standardized permit. In addition, we have omitted references and regulatory citations to the post-closure plan currently found in § 270.14(b)(13) from proposed § 270.290(m) because the post-closure plan would no longer be applicable. As discussed above in **Section VII H: Subpart G - Closure**, all units that receive a standardized permit would be required to either clean close or apply for an individual RCRA post-closure permit. Since existing § 270.14(b)(14) refers to disposal units, which would not be eligible for a proposed standardized permit, we have not carried over this requirement and have reserved § 270.290(n) to maintain a parallel regulatory structure. We have modified the proposed regulatory text in § 270.290(o) from the text in existing § 270.14(b)(15). This is because the last phrase referring to the Part B in paragraph § 270.14(b)(15) would not be applicable to proposed standardized permits. Since existing § 270.14(b)(16) refers to post-closure cost estimates, there is no parallel requirement proposed for standardized permits. Therefore, § 270.290(p) has been reserved.

Requirements in paragraphs existing § 270.14 (b)(20), (b)(21) and (b)(22) are either not appropriate for the proposed standardized permit or are already addressed. Existing paragraph § 270.14(b)(20) requires an information submittal for the purposes of the Regional Administrator to carry out his/her duties under other Federal Laws. We propose this requirement in § 270.275(d), which would require that information to be submitted to the permitting agency to support your application. The current requirements of § 270.14(b)(21) are not applicable because they are for land disposal facilities. The existing requirements of § 270.14(b)(22) discuss the pre-application meeting and the submittal of the meeting summary along with other items. We proposed these

requirements in § 270.275(b), specifying that you would be required to submit these items with the Notice of Intent as discussed previously. We are not proposing to include the requirements of § 270.14(c) because they address ground water monitoring that we believe is unnecessary for the types of units that would be eligible for proposed standardized permits.

**2. Container information.** The container information requirements we are proposing today in § 270.300 are similar to the current requirements in § 270.15. In developing the proposed language for proposed § 270.300, we modified the existing § 270.15 requirements to make them more readable. You would be required to keep information at your facility on the design and operation of the container storage area including its containment system. You would also keep diagrams showing the location of ignitable, reactive, and incompatible waste at your facility along with drawings showing compliance with appropriate buffer zones.

**3. Tank information.** Under today's proposal, you would have to keep tank system information onsite at the facility. This information deals with design, construction, and operation parameters. The proposed § 270.305 requirements are similar to the individual permit requirements currently in § 270.16. However, we would not carry over to proposed § 270.305, the current requirements from § 270.16(h). The existing § 270.16(h) requirements deal with tanks with variances from secondary containment. As discussed previously, we are proposing that tanks have secondary containment to be eligible for the standardized permit.

**4. Equipment information.** Under today's proposal, you would be required to keep onsite the information required for equipment subject to the part 264 subpart BB requirements (air emissions standards for equipment leaks). These information requirements concern emission standards for equipment that contains or comes in contact with hazardous waste with organic concentrations of at least 10 percent by weight. The proposed § 270.310 requirements are similar

to the individual permit requirements currently found in § 270.25. The proposed § 270.315 requirements differ from the existing § 270.25 provisions in one main area. The performance test plan currently required by § 270.25(c) for alternative control devices is not included in proposed § 270.315 requirements because proposed §§ 267.177 and 267.204 would only allow the following control devices: thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit. This is because the performance testing and reporting to support alternative control devices would require close interaction on the part of the facility owner/operator and the permitting agency, which would not be appropriate for the standardized permit.

**5. Air emission control information.** We are also proposing to have you keep onsite the information required for tanks and containers subject to the part 264 subpart CC standards (air emission standards for tanks, surface impoundments and containers). The proposed § 270.315 requirements for air emission controls would be similar to the existing § 270.27 requirements for facilities seeking individual permits. These information requirements concern compliance with the air emission controls that apply to facilities managing hazardous waste in tanks and containers. The proposed § 270.315 requirements contain minor changes to the current § 270.27 provisions because surface impoundments would not be eligible for standardized permits.

#### **E. How would I Modify my RCRA Standardized Permit?**

You would modify your RCRA standardized permit by following the procedures found in proposed §§ 124.211-213. As mentioned above in **Section VI: Maintaining a Standardized Permit**, today's proposed modification procedures are separated into: (1) routine changes to the standardized permit; and (2) significant changes. You would follow these procedures in lieu of the permit modification procedures found in existing § 270.42, which describe permittee initiated

permit modifications for individual permits.

## **X. Public Comment on Corrective Action and Financial Assurance Issues.**

As was discussed previously, in addition to requesting public comment on the proposed provisions of this rule, we are requesting public comment on some additional issues related to corrective action and financial assurance requirements. These additional issues potentially affect the universe of RCRA treatment, storage, and disposal, including those that would receive standardized permits. We have discussed these issues, and our reasons for soliciting comment on them, in detail below.

### **A. Corrective Action.**

#### **1. Could I satisfy the RCRA corrective action requirements for my site by conducting cleanup under an alternate State program?<sup>6</sup>**

EPA is soliciting comment on whether and under what conditions it should adopt a policy that would promote the use of cleanup programs other than the authorized RCRA program to satisfy corrective action requirements at permitted facilities. In the discussion below, EPA presents several issues and options related to the use of such alternate authorities. You should note that these issues and options are presented by the Agency for the purpose of soliciting ideas. In developing this discussion, EPA did not develop an Agency position on these issues -- rather, the Agency chose to present for comment the options and issues it currently is considering. Thus, the following discussion does not represent the Agency's position on the use of alternate authorities,

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<sup>6</sup> The discussion in this notice addresses only alternate State cleanup authorities. For information on conducting cleanup under non-RCRA Federal authorities see a memorandum dated September 24, 1996 from Steven A. Herman and Elliott P. Laws to RCRA/CERCLA National Policy Managers entitled "Coordination between RCRA Corrective Action and Closure and CERCLA Site Activities."

and should not be used as guidance on the issues discussed.

Currently, when an alternate State authority is used to address corrective action at a facility, the provisions of the cleanup order issued by the alternate authority are typically either written into the RCRA permit as conditions, or are incorporated by reference in the permit. In both cases, the provisions of the cleanup order become RCRA permit conditions, which are subject to administrative and judicial review at the time of permit issuance and may be enforced under RCRA.

EPA is considering issuing a policy to address the use, in appropriate circumstances, of alternate cleanup authorities to satisfy the corrective action requirements of a permit. Under such a policy, EPA would recommend general guidelines for determining whether action under an alternate authority will result in cleanups that meet the requirements of §264.101, and would specify how the alternate authority cleanup generally should be addressed in the permit to ensure enforceability of cleanup requirements. This policy, if adopted, would likely apply at all facilities receiving RCRA permits, including standardized permits. It should be noted that, although the Agency currently is contemplating issuing policy guidance on the alternate authority issue, the Agency may decide instead to issue the guidance provisions discussed in this section as final regulations. EPA solicits comment on whether such a policy, if adopted, should be promulgated as regulations or issued as guidance.

EPA believes that many alternate State cleanup programs conduct cleanups that are protective of human health and the environment, and that many alternate State cleanup authorities offer features such as streamlined procedures, provisions for voluntary cleanup, and provisions for collection of user fees to pay for State oversight which, if used at RCRA facilities, could help speed the pace of RCRA cleanups nationwide. At the same time, EPA recognizes its

responsibility to ensure that cleanups conducted at facilities subject to RCRA corrective action requirements satisfy the requirements of RCRA sections 3004(u) and (v) and the “omnibus” provision of section 3005(c)(3) (i.e., are protective of human health and the environment). EPA believes that by developing a policy that recommends guidelines for the use of alternate authorities at permitted facilities, the Agency would be able to leverage the potential offered by alternate authorities, while at the same time ensuring that cleanups conducted under those authorities satisfy the statutory requirements of RCRA.

Whether cleanup at facilities subject to RCRA corrective action is conducted under a Federal cleanup program (e.g., RCRA corrective action or CERCLA), an authorized RCRA corrective action program, or an alternate State cleanup program, EPA is responsible for reporting the progress of cleanups at RCRA treatment, storage, and disposal facilities to Congress and to the public, and for overseeing implementation of the RCRA corrective action program in authorized States. To meet these responsibilities, EPA regularly solicits information from the States regarding the progress of cleanups at RCRA treatment, storage, and disposal facilities, regardless of the authority under which they are being conducted, and includes this information in a national data base for reporting progress at those facilities. It should be noted that, if EPA develops a policy regarding the use of alternate authorities in permits, that practice would not change – EPA would still expect States to provide this information to the Agency.

It also should be noted that § 264.101(b) requires financial assurance for corrective action, and use of an alternate cleanup program at a RCRA permitted facility would not modify that requirement. If an alternate cleanup program were used to address corrective action at a RCRA permitted facility, the permit issuing agency (EPA or the authorized State) would be responsible for ensuring that adequate financial assurance was available to satisfy the requirement of §

264.101 (or authorized State equivalent).

Issues related to potential adoption of this policy, and specific requests for comment are detailed below.

**2. How would EPA and the authorized States address the alternate authority cleanup provisions in the RCRA permit?** At facilities where cleanup is completed satisfactorily prior to permit issuance, EPA or the State authorized for corrective action must make a determination that no additional corrective action is necessary to protect human health and the environment and consequently includes no provisions requiring corrective action in the permit (except those necessary to address future releases). Where corrective action is not completed satisfactorily prior to permit issuance, there may be a number of approaches to allow cleanups conducted under alternate State cleanup programs to satisfy the RCRA permit requirements for corrective action under section 3004(u) and (v).

EPA is soliciting comment on whether to recommend, under certain circumstances, two methods of addressing, within the RCRA permit, the cleanups conducted pursuant to alternate State authorities. Both methods address situations where corrective action is determined by the Agency to be necessary to protect human health and the environment at the time of permit issuance. Under the first method, referred to as “postponement,” the permit issuing agency would postpone the determination of RCRA-specific corrective action provisions until after a cleanup under an alternate State authority is completed. Under the second method, referred to in this notice as “deferral,” the permit issuing agency would make a determination that a cleanup conducted under an alternate authority will satisfy the corrective action requirements at the site, then completely defer corrective action requirements to the alternate program. Both of these methods are discussed below.

### Postponement

Using the postponement method, the agency issuing the RCRA permit would determine, considering the recommended criteria (see discussion below), whether the planned or ongoing cleanup under the alternate program would satisfy the requirements of § 264.101 (i.e., whether it would result in a cleanup that is protective of human health and the environment). The agency would determine that, while corrective action is necessary at the facility, the requirements of § 264.101 will likely be satisfied by the planned or ongoing cleanup, so specific permit cleanup conditions are not necessary at the time of permit issuance. Instead, the Agency would incorporate a schedule of compliance into the permit that, among other things, postpones the final decision on whether specific cleanup conditions need to be included in the RCRA permit until completion of the cleanup under the alternate authority (the schedule of compliance should also include requirements, as appropriate, to report to EPA on the progress of the alternative state cleanup). EPA or the authorized State issuing the permit would make the decision to postpone imposition of specific cleanup permit requirements based on an analysis, considering the recommended criteria, of either the specific corrective action contemplated by the alternate cleanup program, on a review of the alternate program itself, or both, as appropriate. Where the agency determines that the cleanup under the alternate program, or the alternate program itself, would not likely result in a cleanup that is protective of human health and the environment, there would be no postponement and specific cleanup conditions would be required in the RCRA permit at the outset.

As described above, if the agency finds that specific permit cleanup conditions are not necessary at the time of permit issuance, the agency would include in the permit a schedule under which the agency would make a determination, upon completion of the alternative cleanup, whether the requirements of § 264.101 have been satisfied. At that time, if the agency were to



determine that the cleanup did not satisfy the requirements of § 264.101, it would impose further corrective action as necessary to protect human health and the environment, and modify the permit to reflect that determination (using the procedures in § 270.41 for modifications based on new information). The basis for the agency's determination at the time of permit issuance that it is reasonable to postpone a determination on the need for RCRA-specific cleanup requirements until completion of cleanup under the alternate State authority would be part of the administrative record for the permit, and the public would have opportunity to comment on the postponement decision prior to permit issuance. Similarly, the basis for the determination, upon completion of the alternative state program cleanup, whether additional corrective action is required would be part of the administrative record for the permit; the Agency would include in the permit procedures for making such a determination, including an opportunity for public notice and comment. These Agency decisions would be subject to applicable administrative and judicial review. It is important to note that under this approach, during the course of the cleanup, the conditions of the order or other mechanism issued under the alternate State authority would not be enforceable RCRA permit conditions and, therefore, would not be enforceable under RCRA by EPA or citizens. However, under § 270.41(a) (or the authorized State equivalent), EPA or the authorized State would have authority to modify the permit if new information revealed that the cleanup under the alternate authority was not protective, and that RCRA-specific conditions were necessary to protect human health and the environment at that time.

Further, as a condition to allowing postponement of corrective action, EPA or the authorized State would include in the permit schedule of compliance some type of conditions to assure that the Agency or State agency would be made aware of changed conditions at the site, so that the decision to postpone could be reviewed and corrective action conditions incorporated into

the permit, if necessary. These conditions could be structured in several ways. For example, the permit might include a requirement that the permittee notify EPA or the authorized State if the conditions upon which the determination to postpone is made change (e.g., if cleanup under the alternate authority is not proceeding for some reason). Alternatively, the permit might require periodic reporting to the Agency or State agency; at that time the decision to postpone the inclusion of specific corrective action conditions could be reviewed. If necessary, specific corrective action conditions could then be incorporated into the permit. Another option would be to include in the permit schedule of compliance conditions such that EPA or the authorized State agency would receive notice prior to and after the completion of significant milestones of the cleanup. This also would allow for the opportunity to review the decision to postpone imposition of specific cleanup provisions in the RCRA permit.<sup>7</sup>

EPA solicits comment on whether it should, as a general matter, recommend use of the postponement method and on situations where postponement may or may not be appropriate.

### Deferral

A second approach, referred to in this notice as “deferral,” would allow EPA or the authorized State to completely defer corrective action requirements to an alternate cleanup program. To implement the deferral approach, upon permit issuance, EPA or the authorized State would make the finding that corrective action is necessary, and that the appropriate corrective action at the site would be the State action run by the State alternate program. Under this approach, the permit issuing agency would include in the permit a condition requiring the facility

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<sup>7</sup> EPA does not intend that the decision to postpone normally would be revisited. Moreover, EPA would not expect permits to require that the cleanup under the non-RCRA program wait for approval from the RCRA authorized program before proceeding with the cleanup. Instead, it would be incumbent upon the RCRA program to undertake affirmative steps if it was concerned with how the cleanup was proceeding under the non-RCRA program.

to meet all requirements of an alternate State cleanup program order or agreement (or whatever legal mechanism is used by the State program to document the facility's cleanup obligations). The permit would clearly state that the State alternate program is the sole implementer of the cleanup, in other words, it would be the State program that is responsible for the day-to-day implementation of the cleanup without intervention by EPA. It should be noted, however, that because the cleanup requirements imposed by the State alternate authority would, under this approach, become RCRA permit conditions, they would be enforceable by EPA and by citizens. For example, if the alternate authority order specified a deadline for completion of specific interim measures, if such measures were not implemented by that deadline, EPA (or a citizen) could bring an action for enforcement of that requirement under RCRA.

Unlike under the postponement approach, the permitting agency's deferral would not be conditioned on a review conducted at the end of the cleanup. Rather, it would be based on an analysis at the time of permitting, considering the recommended criteria, of the specific corrective action contemplated by the alternate cleanup program, or on a review of the alternate program itself, and demonstrating that the cleanup at the facility will be protective of human health and the environment. The review of the alternate program could include a general prior review (see discussion below) with a particular determination about deferral when issuing the permit. The basis for the agency's decision to defer would be part of the administrative record for the permit, and the public would have opportunity to comment on the decision prior to permit issuance. The final deferral decision would be subject to applicable administrative and judicial review.

EPA solicits comment on whether it should, as a general matter, recommend the use of the deferral method and on situations where deferral may or may not be appropriate.

### **3. How would EPA or the authorized State determine that cleanups conducted under**

**an alternate cleanup program would satisfy the requirements of § 264.101?**

Upon issuing a permit at a facility where the Agency has determined that corrective action is necessary, EPA or the authorized State must make a determination that the provisions of the permit addressing corrective action satisfy the requirements of § 264.101, i.e., that they require “corrective action as necessary to protect human health and the environment ...”(see § 264.101(a)). This determination would be no different where the requirements of § 264.101 are to be satisfied by a cleanup conducted through an alternate cleanup program at a RCRA permitted facility. In order to make the determination that the permit requires corrective action “as necessary to protect human health and the environment,” (or, in the case of postponement, that the alternate program cleanup is likely to be adequate, and it therefore is reasonable to set a schedule that postpones the determination of whether specific corrective action requirements are necessary to protect human health and the environment), the Agency or the authorized State would either: (1) review the alternate program and make a determination that cleanups conducted under that program will, or likely will, satisfy the requirements of § 264.101<sup>8</sup>; or (2) review the provisions of an existing site-specific cleanup order (or equivalent) and find that it will satisfy the requirements of §264.101. Therefore, EPA believes that a policy supporting use of alternate authorities at permitted sites should include guidance for assessment of alternate cleanup programs.

EPA is soliciting comment on: (1) what assessment factors should be recommended for assessing an alternate program (or site-specific cleanup); and (2) what role should EPA assume in

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<sup>8</sup>It should be noted that although the decision whether it is appropriate to postpone or defer in any particular instance will be informed by the results of prior program review (and EPA does not generally expect that additional review of a previously reviewed program will be necessary at the time of permit issuance), that decision will be made on a case-by-case basis in the course of permit issuance.

reviewing and approving alternate State cleanup programs.

Assessment Criteria. EPA believes that a policy addressing use of alternate State cleanup programs at RCRA permitted facilities should recommend criteria for assessment and evaluation of those programs. EPA already has provided guidance on assessment and review of alternate programs on two occasions. In a memorandum dated November 14, 1996 from Elliot P. Laws and Steven A. Herman to Superfund National Policy Members entitled “Interim Approaches for Regional Relations with State Voluntary Cleanup Programs,” (the VCP guidance) EPA recommended six baseline criteria for evaluating the adequacy of State voluntary cleanup programs. (A copy of the VCP guidance is available in the docket for today’s proposal.) In the October 22, 1998 final Post-Closure rule (see 63 FR 56710 at 56792), EPA established criteria to evaluate the alternate authorities that would be used in lieu of a post-closure permit to address corrective action. The criteria from the VCP guidance and the Post-Closure rule are outlined below. EPA solicits comment on recommending the use of the VCP guidance criteria and/or the Post-Closure rule criteria to evaluate alternate programs for use in RCRA permits. EPA also solicits comment on other criteria that might be appropriate.

It should be noted that EPA would not necessarily deny the use of an alternate cleanup program at a RCRA permitted facility because it does not meet all of the criteria developed by the Agency. EPA believes that inadequacies of an alternate State program could be addressed by supplementing the program through conditions in the RCRA permit. For example, if the Agency determined that an alternate program did not provide for meaningful public involvement, the Agency could still use the approaches outlined above, but also include specific permit provisions requiring such public participation (or ask the alternate state program to enhance public participation at the specific site in question). EPA solicits comment on this approach.

**VCP Guidance Criteria.** In the November 14, 1996 VCP guidance, EPA established the baseline criteria for evaluating adequacy of State voluntary cleanup programs. These criteria are used by the Agency in negotiating Memoranda of Agreement (MOAs) with States for purposes of dividing cleanup responsibilities between EPA's Superfund program and the States. By negotiating these MOAs, EPA seeks to develop partnerships with the States to encourage cleanups at non-NPL sites, including brownfields.

Under the guidance, voluntary cleanup programs should be evaluated to assure they have the following:

- opportunities for meaningful public involvement;
- response actions that are protective of human health and the environment;
- adequate resources to ensure that response actions are conducted in an appropriate and timely manner, and that both technical assistance and streamlined procedures, where appropriate, are available;
- mechanisms for the written approval of response action plans and a certification or similar documentation indicating that response actions are complete;
- adequate oversight to ensure that response actions are conducted in such a manner to assure protection of human health and the environment; and
- capability, through enforcement or other authorities, of ensuring completion of response actions if the party conducting the response action fails or refuses to complete the necessary response actions, including operation and maintenance or long-term monitoring activities.

Many of these listed criteria are the same as those used in the authorization process for state RCRA corrective action programs. However, it should be noted that the review of resources available to voluntary cleanup programs during the MOA process is typically significantly less detailed than the capability assessment associated with State authorization. Regardless of which criteria may ultimately be used, EPA does not believe the level of overall review of the alternate

program would be the same level as an authorization review. Instead, the review would simply need to be sufficient to support a determination that the use of the alternate program will, or in the case of postponement likely will, result in protective cleanups, i.e., will satisfy the requirements of § 264.101.

EPA solicits comment on whether these factors are appropriate to consider in the context of reviewing alternate cleanup programs for use at permitted facilities. In particular, EPA solicits comment on to what extent the reviewing agency should consider the practices, resources, and oversight capability of the alternate program when determining whether cleanups conducted under the program will satisfy the requirements of § 264.101. Finally, EPA solicits comment on whether other aspects of the alternate program, not listed above, also should be considered.

**Post-Closure Rule Criteria.** In the final Post-Closure rule, the Agency established that an assessment of a cleanup program must demonstrate, at a minimum, that the authority is sufficiently broad to: (1) require facility-wide assessments; (2) address all releases of hazardous wastes or constituents to all media for all SWMUs within the facility boundary as well as off-site releases to the extent required under RCRA section 3004(v) (to the extent that releases pose a threat to human health and the environment); and (3) impose remedies that are protective of human health and the environment. In promulgating that final rule, EPA determined that these criteria are appropriate for evaluation of alternate authorities that would be used in lieu of post-closure permits to satisfy corrective action requirements. EPA solicits comments on whether these factors are appropriate for reviewing alternate programs for use at permitted facilities.

Over the years, EPA has provided guidance on imposing remedies that are protective of human health and the environment, and that will achieve corrective action cleanup objectives. On May 1, 1996, EPA published an Advance Notice of Proposed Rulemaking (ANPR) (see 61 FR

19432), which serves as the primary guidance for the corrective action program. EPA expects that any policy issued on the use of alternate cleanup programs at RCRA permitted facilities would provide that, when evaluating a State's alternate cleanup program, EPA or the authorized State should consider whether cleanups conducted under the program are at least as protective as the EPA corrective action program or the equivalent State corrective action program authorized by EPA, as implemented under the ANPR guidelines.

In addition to the criteria discussed above, the Post-Closure final rule required that a cleanup conducted under an alternate authority include meaningful opportunity for public involvement (see § 265.121(b)). EPA believes that public involvement is a critical component of a corrective action process that assures that cleanups are protective of human health and the environment, and that any policy supporting use of alternate authorities at permitted facilities must include meaningful involvement of the public. The final Post-Closure rule established criteria for meaningful public involvement -- at a minimum, public notice and opportunity for comment at three key stages of cleanup: (1) when EPA or the authorized State agency first becomes involved in the cleanup process as a regulatory or enforcement matter, (2) when EPA or the authorized State agency is ready to approve a remedy for the site (this opportunity must include a chance to comment on the assumptions on which the remedy is based), and (3) when EPA or the authorized State is ready to decide that remedial action is complete at the facility. EPA solicits comment on whether these are the appropriate public involvement criteria to recommend for cleanups conducted under alternate authorities at permitted facilities.

The final Post-Closure rule also discussed the need for the alternate authority to have adequate enforcement authority. EPA specifically stated in the preamble to that rule, that the alternate authorities "must include the authority to sue in court, and to assess penalties, consistent



with § 271.16” (see 62 FR 56710 at 56730). The referenced regulation specifically requires that the alternate program have the authority to enjoin any threatened or continuing violation of the requirements, and the authority to compel compliance with requirements for corrective action or other emergency response measures deemed necessary to protect human health and the environment. These provisions assure that program conducting the cleanup will be able to enforce the cleanup requirements imposed at the facility in a timely manner. As in the case of the Post-closure rule, EPA wants to assure that, where a cleanup is conducted through an alternate cleanup program at a RCRA permitted facility, the Agency or the authorized State will be able to enforce the cleanup requirements in a timely manner.

General Process for Review of Alternate Cleanup Programs. EPA believes that, as a general matter, the Agency should review state alternate program in advance of relying on them at individual sites in the state. EPA believe such an up-front review would result in faster permit decisions overall, since it would provide, in advance, useful record support for a postponement of deferral decision at a specific site. In addition, any potential issues associated with alternate authority would be worked out in advance of individual permit decisions. EPA therefore solicits comment on two options for documenting the up-front review of an alternate program. EPA approves RCRA cleanup programs through the corrective action authorization process (and reviews alternate authorities as part of authorization for the Post-Closure rule). EPA also conducts less formal reviews as part of program oversight, and as part of Federal-State joint implementation efforts. These less formal reviews typically result in site-specific or program-wide agreements between EPA and States. Under the first option, EPA could use an authorization approach, where the State would submit, among other things, copies of the statutes and regulations for the alternate cleanup authority, to demonstrate that the program would result in protective

cleanups. Under the second option, EPA and the State could enter into an MOU, or other agreement, regarding permit determinations and the use of a particular alternate authority for RCRA corrective action facilities (e.g., a VCP MOA for RCRA corrective action). EPA solicits comment on these two options, when they should be used, and whether other options should be considered. In either case, the purpose of this up-front review would be to make an early assessment of the fitness of an alternate cleanup program for use at permitted facilities in the State. Of course, although the decision whether it is appropriate to postpone or defer in any particular instance will be informed by the results of this prior program review (and EPA does not generally expect that additional review of a previously reviewed program will be necessary at the time of permit issuance) that decision will be made on a case-by-case basis in the course of permit issuance.

In some cases, EPA may already have reviewed an alternate State cleanup authority for other purposes. For example, EPA may have reviewed and approved the authority during authorization of the State RCRA program for the Post-Closure Rule. In other cases, EPA may have reviewed the authority during the process of authorizing the State RCRA program for section 3004(u) corrective action. EPA solicits comment on whether alternate cleanup authorities that have been reviewed during the authorization process should be evaluated again. EPA also solicits comments on other situations where the Agency may have reviewed the alternate authority and where it might be unnecessary to conduct additional review.

Process for Review of Alternate Cleanup Programs In states Authorized for RCRA Corrective Action. EPA solicits comment on what is an appropriate level of participation for the Agency in the review and assessment of an alternate program in a state authorized for RCRA corrective action. In particular, EPA solicits comment on whether it is necessary for EPA to

review and approve an alternate program before a State authorized for corrective action defers to that program in a permit, or postpones corrective action under a permit pending a cleanup conducted under the alternate program. While a State authorized for corrective action is responsible for implementing the program, the Agency retains oversight responsibility in authorized States; EPA believes that review and assessment of alternate cleanup programs used in the ways outlined above, should be considered part of the Agency's oversight responsibility. EPA solicits comment on to what extent review and assessment of alternate programs should be considered part of the Agency's oversight responsibilities, and on what its role should be in evaluating alternate State cleanup programs.

## **B. Financial Assurance**

EPA's Office of Inspector General (OIG) recently issued an audit report on financial assurance for closure (RCRA Financial Assurance for Closure and Post-Closure, Audit Report No. 2001-P-007, U. S. Environmental Protection Agency Office of Inspector General, March 30, 2001. (Available at <http://www.epa.gov/oigearth/audit/list301/finalreport330.pdf>, and in the docket to today's proposed rulemaking). The report raised several issues regarding the use of pure captive insurance for closure. The report states:

We believe that insurance policies issued by a "captive" insurance company do not provide an adequate level of assurance because we found no independence between facility failure and the failure of the mechanism.

In addition, the report concluded that the sampled captive insurance policies did not allow assignment to a new owner or operator as required by the regulations. EPA has sent a letter to the Vermont Department of Banking, Insurance, Securities and Health Care Administration requesting information on the assignment of captive insurance policies issued by insurers domiciled there.

The docket to this rulemaking includes copies of EPA's letter and Vermont's response. The audit report also recommends that the Agency investigate complex insurance issues with the States to determine the States' need for guidance. EPA requests comments on the conclusions in the OIG report. EPA also requests information from States, the insurance industry, and the regulated community on the need for the guidance suggested by OIG, appropriate topics, and information that should be included.

The OIG report considers captive insurance to be a form of "self insurance," and in that sense is similar to the financial test. For the financial test, EPA has information on the probability that a company which passes the financial test could enter bankruptcy and so be unable financially to fulfill its closure obligations. This information comes from data on bankruptcy rates, and default rates on bonds of various ratings. For captive insurance, we have no specific information, and therefore would like States, organizations, companies, or individuals to provide us with any information they may have on the risks associated with captive insurers, and experience with their payment of claims for closure, post-closure care, or third party liability under RCRA.

The financial status of the parent company and the pure captive insurer is potentially important because regulatory agencies might be forced to perform closure at a facility if the parent were to enter bankruptcy without having closed the facility and if the captive insurance company could not afford to close the facility promptly or properly. While the proposed financial test requires a company have a tangible net worth of at least \$10 million more than the amount of obligations covered, the capitalization requirements for captive insurers can be much smaller. Vermont, for example, has a minimum capitalization requirement for a pure captive insurance company of \$250,000. The cost of a RCRA closure could surpass that amount.

In addition, we are not aware of any state that covers captive insurance with State

insurance funds that pay off claims in the event of the failure of the insurer. Because the captive insurer is providing insurance for its parent company, a State that would provide such coverage for claims might be creating a disincentive for prudent risk management. However, this means that in the event of bankruptcy by the company and the default of the captive insurer, EPA or the State might not have the funds available for closure. Therefore, we request comments on the use of captive insurance as a financial assurance mechanism for closure.

We also request comments on any additional requirements for insurers in general, such as minimum ratings (and appropriate rating agencies), beyond the current requirement to “be licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.” (See § 264.143(e)(1)). We are interested in this information not only for potential users of the standardized permit, but also for other facilities that demonstrate financial assurance for environmental obligations through the use of insurance. Insurance is currently an allowable mechanism for demonstrating financial assurance for closure in §§ 258.74, 264.143, 265.143 as well as 761.65. Insurance is also an allowable mechanism for demonstrating financial assurance for the costs of plugging and abandonment of Class I hazardous waste injection wells under §144.63.

Specifically, EPA is considering a requirement that an insurer, in addition to being “licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer, in one or more States,” meet at least one of the following requirements: a rating of Aaa, Aa or A by Moody’s, or a rating of AAA, AA or A by Standard & Poor’s, or a rating of A++, A+, A or A- from A.M. Best Company.

EPA recognizes that these ratings may appear to be more stringent than the requirements it has established for companies that qualify on the basis of a bond rating to self-insure under the

financial test in, for example, subpart H of parts 264 and 265. This is appropriate because a company that previously qualified to use the financial test and then becomes ineligible because of a reduced bond rating is still likely to qualify for a third party instrument such as a surety bond or a letter of credit. However, third party providers of financial assurance generally service a group of owners and operators that are financially weaker than those qualifying for the financial test (otherwise they would have used the less expensive financial test as a mechanism to comply with the financial assurance requirements). If a third party provider, such as an insurer, loses its qualification to provide assurance, its customers can find it very difficult to obtain another instrument within the 60 day period required by the regulations. Until the customers obtain a new instrument, the policy remains in force, but the certainty of payment is less than with a more qualified company. By imposing an additional requirement on the financial strength of the insurer, EPA expects to reduce the possibility that a permitting authority is faced with having a claim on a third party for closure which the third party cannot fund.

## **XI. State Authorization**

### **A. Applicability of Rules in Authorized States**

Under section 3006 of RCRA, EPA may authorize qualified States to administer the RCRA hazardous waste program within the State. A State may receive authorization by following the approval process described under part 271. See 40 CFR part 271 for the overall standards and requirements for authorization. Following authorization, the State requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized States also have independent authority to bring enforcement actions under State law.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. In contrast, under RCRA section 3006 (g)(42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized States at the same time they take effect in unauthorized States. As such, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorized the State to do so.

Authorized States are required to modify their programs when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows States to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered equivalent or less stringent than existing Federal requirements.

## **B. Effect of State Authorizations**

Today's proposal, if finalized, will promulgate regulations that are not HSWA-related. Thus, the standards proposed today will be applicable on the effective date only in those States that do not have final authorization. In authorized States, the requirements would not be applicable until the State revises its program to adopt equivalent requirements under State law.

Authorized States are required to modify their programs only when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized State regulations. For those changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which

allows States to impose more stringent regulations than the Federal program. Today's rule however, is considered to be neither more nor less stringent than the current standards. Therefore, authorized States would not be required to modify their programs to adopt regulations consistent with and equivalent to today's proposed standards.

As in the case of individual permit procedures, a state that chooses to adopt and request authorization for issuing standardized permits must adopt permitting procedures equivalent, but not identical to those promulgated by EPA. The authorization regulations in 40 CFR 271.14 lists several provisions of the permitting regulations which EPA determined are necessary for an equivalent permitting program. States would need to adopt a similar scope of legal authorities for issuing standardized permits as for individual permits.

## **XII. Regulatory Assessments**

### **A. Executive Order 12866**

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] we must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or



(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has determined that this proposed rule is a “significant regulatory action” because it raises novel legal or policy issues. As such, we submitted this action to OMB for review before publishing it in the Federal Register. Changes made in response to OMB suggestions or recommendations are documented in the public record in support of this proposal.

**1. Assessment of Potential Costs and Benefits.** For regulations that are projected to have significant economic impacts, Agencies are required to conduct a “Regulatory Impact Assessment” of potential costs and benefits of the regulation. Although OMB has not designated this proposed rule as economically significant, we have completed a preliminary economic analysis of the proposed rule, the results of which we summarize below and present for public review and comment.

**a. Description of entities to which this rule applies.** This rule potentially applies to approximately 866 existing private sector facilities which non-thermally treat and/or store RCRA hazardous waste in tanks, containers, and containment buildings. The rule only applies to on-site treatment and storage of hazardous waste, not to off-site commercial treatment and storage facilities. Eligible facilities may voluntarily participate in the RCRA standardized permit program. We designed the proposed rule to reduce the information reporting requirements for eligible facilities, as well as to reduce EPA and state administrative review time for these permit activities. Eligible facilities are a mix of small, medium and large facilities.

**b. Description of potential benefits of this rule.** The RCRA standardized permit proposal is an optional rule designed to streamline the regulatory burden to EPA/states as well as

to private sector facilities covered by the rule, by reducing the amount of information collected, submitted and reviewed for RCRA permit actions (i.e., new RCRA permit applications, RCRA permit modifications, and RCRA permit renewals). Because the rule proposes to streamline existing RCRA regulation, rather than add new RCRA regulation, we expect implementation of the rule by the EPA and by states with EPA-authorized permitting programs to result in economic benefits in the form of national cost savings from reducing both government and private sector resources required for the RCRA permit process. The public is particularly encouraged to comment on desired permit streamlining benefits.

Based on an economic analysis, we estimate that the potential average annual cost savings to eligible facilities resulting from implementation of this rule will range from approximately \$100 to \$5,800 per permit action (i.e., between two to 140 administrative burden hours reduction per permit action, which is equivalent to 4% to 14% reduction in burden hours compared to the baseline (existing) RCRA permit program), depending on the type of individual permit they're converting from and the type of eligible treatment and storage equipment. We estimate that an average of 55% of annual permit actions will involve container systems, 43% will involve tank systems, and 2% containment buildings. Aggregated over an average annual 135 RCRA standardized permit actions (11% of which are expected to consist of conversion of existing permits, 61% of interim status and new facility permit applications, 18% modification permit applications, and 10% permit renewal applications upon expiration), produces an expected national cost savings benefit for RCRA permitting of between \$0.36 to \$0.53 million annually. This annual savings consists of 76% of benefits to the private sector eligible facilities, and 24% of benefits to EPA/state permit authorities. Potential cost savings benefits are incremental to the average annual cost associated with the current RCRA permitting program.

**c. Description of potential costs of this rule.** We believe that the costs to EPA and states of implementing the standardized permit option will be minimal, and therefore we did not estimate them in the economic analysis. Private sector costs associated with this rule have been included and netted-out in the incremental cost comparison of the preliminary economic analysis.

**d. Description of potential net benefits of the rule.** Because implementation costs are relatively minimal or have otherwise been netted-out from the cost savings analysis as explained above, the \$0.36 to \$0.56 million in average annual national cost savings benefits identified above, also represent the potential net benefits associated with implementation of this rule.

## **B. Regulatory Flexibility Act**

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

The Agency has determined that today's final rule will not have a significant adverse economic impact on a substantial number of small entities, since the rule has direct effects only on state agencies. Otherwise, the proposal is expected to provide net annual benefits (in the form of

administrative paperwork burden reduction cost savings) from the voluntary participation by eligible facilities in the private sector. Therefore, we did not prepare an RFA. Based on the foregoing discussion, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

### **C. Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under Section 202 of UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule which must have a written statement, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes an explanation with the final rule. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on

compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The proposed rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not authorized for the RCRA program and therefore will not be implementing these rules.

#### **D. Paperwork Reduction Act**

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1935.01) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at [farmer.sandy@epamail.epa.gov](mailto:farmer.sandy@epamail.epa.gov), or by calling (202) 260-2740. A copy may also be downloaded off the internet at <http://www.epa.gov/icr>.

Section 270.275 requires that applicants for a standardized permit submit to the permitting agency information that will be used as the basis of the standardized permit application. This information includes:

- C Part A permit information required by section 270.13;
- C A summary of the pre-application public meeting and other materials required by section 124.31;

- C Documentation of compliance with the location standards of sections 267.18 and 270.14(b)(11);
- C Information that allows the Director to carry out his obligations under other Federal laws required in § 270.3;
- C Solid waste management unit information required by § 270.14(d); and
- C A signed certification of the facility's compliance with part 267, as specified at § 270.280.

EPA needs this information to comprehensively evaluate the potential risk posed by facilities seeking permits. This information aids EPA in meeting its goal of ascertaining and minimizing risks to human health and the environment from hazardous waste management facilities.

In addition, facilities that store or treat hazardous waste under a standardized permit must keep at their facilities general types of information (§ 267.290), as well as unit-specific information for containers (§ 267.300), tanks (§ 267.305), equipment subject to part 264, subpart BB (§ 270.310), and tanks and containers subject to part 264, subpart CC (§ 270.315). EPA anticipates that the owner or operator will use this information to ensure that tanks, containers, and other equipment are in good condition and that operating requirements are being satisfied, and to prevent placing in proximity wastes that are incompatible with other wastes that are likely to ignite or explode. EPA needs this information to evaluate compliance of facilities with the permitting standards. These requirements contribute to EPA's goal of insuring that hazardous waste management facilities are operated in a manner fully protective of human health and the environment.

Information collection requirements in the standardized permit proposal are authorized by sections 2002 and 3007 of RCRA, as amended. In particular, section 2002 gives the

Administrator the authority to promulgate such regulations as are necessary to carry out the functions of this subchapter. Section 3007 gives EPA the authority to compel anyone who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes to “furnish information related to such wastes” and make such information available to the government for “the purposes of ...enforcing the provisions of this chapter.” EPA believes the information collection requirements in the proposal are consistent with the Agency’s responsibility to protect human health and the environment.

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which define EPA's general policy on public disclosure of information, contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the information that would be requested pursuant to the proposed information collection requirements. If such a claim were asserted, EPA must and will treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108. Further, no questions of a sensitive nature are included in the proposed information collection requirements.

EPA estimates that a total of 175 (permitted, interim status, and new) captive TSDFs per year will apply for a RCRA standardized permit in the initial few years after its implementation. EPA estimates that the annual respondent burden to be approximately 13,367 hours, at an annual cost of \$1,307,512. Assuming each eligible TSDF responds once annually (i.e. process a RCRA permit action), the average burden per response would be 76 hours. (Note that this burden estimate does not net-out the baseline burden of the existing RCRA permit program, as was done in the economic analysis summarized a few sections above).

Burden means the total time, effort, or financial resources expended by persons to generate,

maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after [Insert date of publication in the FEDERAL REGISTER], a comment to OMB is best assured of having its full effect if OMB receives it by [Insert date 30 days after publication in the FEDERAL REGISTER]. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

#### **E. Executive Order 13045: Children's Health**



“Protection of Children from Environmental Health Risks and Safety Risks” (62 F.R. 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

#### **F. National Technology Transfer and Advancement Act**

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Pubic Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, we are not considering the use of any voluntary consensus standards.

#### **G. Executive Order 12898: Environmental Justice**

Under Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” as well as through EPA's April 1995, “Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,” and National Environmental Justice Advisory Council, we have initiated efforts to incorporate environmental justice into our policies and programs. We are committed to addressing environmental justice concerns and have assumed a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. Our goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of our policies, programs, and activities, and that all people live in clean and sustainable communities. To address this goal, we considered the impacts of this rule on low-income populations and minority populations.

We concluded that today's final rule will potentially advance environmental justice goals because the public involvement process set forth in today's rule improves the opportunity for all potentially affected segments of the population to participate in public hearings and/or to provide comment on health and environmental concerns that may arise pursuant to a proposed Agency action under this rule.

#### **H. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments**

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian

tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. There is no impact to tribal governments as the result of the standard permit. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

#### **I. Executive Order 13132: Federalism**

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and

local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Rather, it would provide more flexibility for States to implement already-existing requirements. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Nevertheless, EPA worked closely with state governments in the development of this proposed rule. We distributed drafts of the proposed rule to California and Wisconsin for their review and comment. We also distributed copies of the proposed rule to the Association of State and Territorial Solid Waste Management Officials. These states and state organizations provided meaningful and timely input to the agency in the development of this proposal.

#### **J. Executive Order 13211: Energy Effects**

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"

(66 Fed. Reg. 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects

### **XIII. List of References**

1. The EPA Permit Improvement Team Final Draft of Concept Paper on Environmental Permitting and Task Force Recommendations. EPA, April 1996.
2. The Nation's Hazardous Waste Management Program at a Crossroads: The RCRA Implementation Study. EPA/530-SW-90-069, Office of Solid Waste and Emergency Response, July 1990.
3. RCRA Part A Application. EPA/8700-23, October 1999.
1. RCRA Public Participation Manual. EPA/530-R-96-007, Office of Solid Waste and Emergency Response, September 1996.
5. Summary of Standardized Permit Forum Meeting held in Arlington, Virginia. October 1997.
6. Closure Cost Estimates for Standard Permits, Background Document - Option 5. EPA, December 1998.
7. Closure Cost Estimates for Standard Permits, Background Document - Option 4. EPA, December 1998.
8. Economics Background Document: Estimate of Potential National Cost Savings for the Industrial Hazardous Waste "Standardized" RCRA Permit Proposal, EPA Office of Solid Waste, Economics, Methods & Risk Analysis Division, 03 May 2000, 73pp.
9. EPA Memorandum: Coordination between RCRA Corrective Action and Closure and CERCLA Site Activities, From: Steven A. Herman and Elliott P. Laws, To:

RCRA/CERCLA National Policy Manages Region I-X, 24 September 1996.

10. EPA Memorandum: Interim Approaches for Regional Relations with State Voluntary Cleanup Programs, From Elliot P. Laws and Steven A. Herman, To: Superfund National Policy Members, 14 November 1996.
11. Final Post Closure Rule, 63 FR 56710, October 22, 1998.
12. Advance Notice of Proposed Rulemaking on RCRA Corrective Action Program, 61 FR 19432, May 1, 1996.

### **List of Subjects**

#### 40 CFR Part 124

Administrative practice and procedure, Hazardous waste, RCRA permits.

#### 40 CFR Part 260

Hazardous waste management system

#### 40 CFR Part 267

Hazardous waste management standards, Standardized permit requirements, Reporting and recordkeeping requirements, Corrective action, Financial assurance

#### 40 CFR Part 270

Administrative practice and procedure, Hazardous waste, RCRA permits, Permit application and modification procedures, Standardized permit requirements.

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Christine Todd Whitman,

Administrator

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Date

Billing Code:

For reasons stated in the preamble, title 40 chapter I of the Code of Federal Regulations is proposed to be amended as follows:

**Part 124 -- PROCEDURES FOR DECISION MAKING**

1. The authority citation for Part 124 continues to read as follows:

**Authority:** Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air act, 42 U.S.C. 1857 *et seq.*

2. Section 124.1 is amended by revising paragraph (b) to read as follows:

**§ 124.1 Purpose and Scope.**

\* \* \* \* \*

(b) This Part 124 is organized into six subparts. Subpart A contains general procedural requirements applicable to all permit programs covered by these regulations. Subparts B through G supplement these general provisions with requirements that apply to only one or more of the programs. Subpart A describes the steps EPA will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits. Subpart A also covers assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decision. Subpart B contains public participation requirements applicable to all RCRA hazardous waste management facilities. Subpart C contains definitions and specific procedural requirements for PSD permits. Subpart D applies to NPDES permits until an evidentiary hearing begins, when subpart E procedures take over for EPA-issued NPDES permits and EPA-terminated RCRA permits. Subpart F, which is based on the “initial licensing” provisions of the



Administrative Procedure Act (APA), can be used instead of subparts A through E in appropriate cases. Subpart G contains specific procedural requirements for RCRA standardized permits, which, in some instances, change how the General Program Requirements of subpart A apply in the context of the RCRA standardized permit.

3. Section 124.2 is amended by revising the definition of “permit” in paragraph (a) and adding a definition for a standardized permit in alphabetical order as follows:

**§ 124.2 Definitions.**

(a) \* \* \*

*Permit* means an authorization, license or equivalent control document issued by EPA or an “approved State” to implement the requirements of this part and parts 122, 123, 144, 145, 233, 270, and 271. “Permit” includes RCRA “permit by rule” (§270.60), UIC area permit (§144.33), RCRA standardized permit (§270.67), NPDES or 404 “general permit” (§§ 270.61, 144.34, and 233.38). Permit does not include RCRA interim status (§270.70), UIC authorization by rule (§144.21), or any permit which has not yet been the subject of final agency action, such as a “draft permit” or a “proposed permit.”

\* \* \* \* \*

*Standardized permit* (RCRA) means a RCRA permit authorizing management of hazardous waste issued under subpart G of this part and 40 part 270 subpart I. The standardized permit may have two parts: a uniform portion issued in all cases and a supplemental portion issued at the Director’s discretion.

\* \* \* \* \*

4. Section 124.5(c) is amended by revising paragraph (c) introductory text and paragraph (c)(1) as follows:

**§124.5 Modification, revocation and reissuance, or termination of permits.**

\* \* \* \* \*

(c) (*Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)*). (1) If the Director tentatively decides to modify or revoke and reissue a permit under §122.62 (NPDES), 144.39 (UIC), 233.14 (404), or 270.41 (other than 270.41(b)(3)) or 270.42(c) (RCRA), he or she shall prepare a draft permit under §124.6 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, other than under 40 CFR 270.41(b)(3), the Director shall require the submission of a new application. In the case of revoked and reissued permits under 40 CFR 270.41(b)(3), the Director and the permittee shall comply with the appropriate requirements in 40 CFR part 124, subpart G for RCRA standardized permits.

\* \* \* \* \*

5. Section 124.32 is amended by revising paragraphs (a), (b), and (c) as follows:

§ 124.31 Pre-application public meeting and notice.

(a) Applicability. The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a class 3 permit modification under 40 CFR 270.42. For the purposes of this section only, "hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units

are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section shall also apply to hazardous waste management facilities for which facility owners or operators are seeking coverage under a RCRA standardized permit (see 40 part 270, subpart I). The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Prior to the submission of a part B RCRA permit application for a facility, or to the submission of a written notice of intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart I), the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b) of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the part B application, in accordance with 40 CFR 270.14(b), or with the written notice of intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart I).

\* \* \* \* \*

6. Section 124.32 is amended by revising paragraph (a) as follows:

**§ 124.32 Public notice requirements at the application stage.**

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B

applications seeking renewal of permits for such units under 40 CFR 270.51. For the purposes of this section only, "hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR Part 271. The requirements of this section do not apply to hazardous waste units for which facility owners or operators are seeking coverage under a RCRA standardized permit (see 40 CFR part 270, subpart I)). The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

\* \* \* \* \*

7. Subpart G is added to read as follows:

#### **Subpart G – Procedures for RCRA Standardized Permit**

##### GENERAL INFORMATION ABOUT STANDARDIZED PERMITS

Sec.

124.200 What is a RCRA standardized permit?

124.201 Who is eligible for a standardized permit?

##### APPLYING FOR A STANDARDIZED PERMIT

124.202 How do I as a facility owner or operator apply for a standardized permit?

124.203 How may I switch from my individual RCRA permit to a standardized permit?

##### ISSUING A STANDARDIZED PERMIT

124.204 What must I do as the Director of the regulatory agency to prepare a draft standardized permit?

124.205 What must I do as the Director of the regulatory agency to prepare a final standardized

permit?

124.206 In what situations may I require a facility owner or operator to apply for an individual permit?

#### OPPORTUNITIES FOR PUBLIC INVOLVEMENT IN THE STANDARDIZED PERMIT PROCESS

124.207 What are the requirements for public notices?

124.208 What are the opportunities for public comments and hearings on draft permit decisions?

124.209 What are the requirements for responding to comments?

124.210 May I, as an interested party in the permit process, appeal a final standardized permit?

#### MAINTAINING A STANDARDIZED PERMIT

124.211 What types of changes may I make to my standardized permit?

124.212 What procedures must I follow to make routine changes?

124.213 What procedures must I follow to make significant changes?

### **Subpart G – Procedures for RCRA Standardized Permit**

#### GENERAL INFORMATION ABOUT STANDARDIZED PERMITS

#### **§ 124.200 What is a RCRA standardized permit?**

The standardized permit is a special form of RCRA permit, that may consist of two parts: a uniform portion that the Director issues in all cases, and a supplemental portion that the Director issues at his or her discretion. We formally define the term “*Standardized permit*” in § 124.2 (Definitions).

(a) What comprises the uniform portion?

The uniform portion of a standardized permit consists of terms and conditions, relevant to the unit(s) you are operating at your facility, that EPA has promulgated in 40 CFR part 267 (Standards for Owners and Operators of Hazardous Waste Facilities Operating under a

Standardized Permit). If you intend to operate under the standardized permit, you must comply with these nationally applicable terms and conditions.

(b) What comprises the supplemental portion?

The supplemental portion of a standardized permit consists of site-specific terms and conditions, beyond those of the uniform portion, that the Director may impose on your particular facility, as necessary to protect human health and the environment. If the Director issues you a supplemental portion, you must comply with the site-specific terms and conditions it imposes.

(1) If the Director determines that it is necessary, he or she must include terms and conditions in your supplemental portion to institute corrective action under 40 CFR 267.101 (or State equivalent) or to otherwise protect human health and the environment.

(2) Unless otherwise specified, these supplemental permit terms and conditions apply to your facility in addition to the terms and conditions of the uniform portion of the standardized permit and not in place of any of those terms and conditions.

**§ 124.201 Who is eligible for a standardized permit?**

If you generate hazardous waste and then non-thermally treat or store the hazardous waste in tanks, containers, or containment buildings, you may be eligible for a standardized permit. We will inform you of your eligibility when we make a decision on your permit.

APPLYING FOR A STANDARDIZED PERMIT

**§ 124.202 How do I as a facility owner or operator apply for a standardized permit?**

(a) You must follow the requirements in this subpart as well as those in § 124.31(RCRA Pre-application public meeting and notice), 40 CFR 270.10 (General application requirements) and 40 CFR part 270, subpart I (RCRA Standardized Permits for Storage and Treatment Units).

(b) You must submit to the Director a written notice of your intent to operate under the

standardized permit. You must also include the information and certifications required under 40 CFR part 270, subpart I.

**§ 124.203 How may I switch from my individual RCRA permit to a standardized permit?**

You may request that your individual permit be revoked and reissued as a standardized permit, in accordance with § 124.5.

ISSUING A STANDARDIZED PERMIT

**§ 124.204 What must I do as the Director of the regulatory agency to prepare a draft standardized permit?**

(a) You must review the notice of intent and supporting information submitted by the facility owner or operator.

(b) You must determine whether the facility is or is not eligible to operate under the standardized permit.

(1) If the facility is eligible for the standardized permit, you must propose terms and conditions, if any, to include in a supplemental portion. If you determine that these terms and conditions are necessary to protect human health and the environment but for some reason cannot be imposed, you must tentatively deny coverage under the standardized permit.

(2) If the facility is not eligible for the standardized permit, you must tentatively deny coverage under the standardized permit.

(c) You must prepare your draft permit decision within 120 days after receiving a notice of intent and supporting documents from a facility owner or operator. Your tentative determination under this section to deny or grant coverage under the standardized permit, including any proposed site-specific conditions in a supplemental portion, constitutes a draft permit decision.

(d) Many requirements in subpart A of this part apply to processing the standardized permit

application and preparing your draft permit decision. For example, your draft permit decision must be accompanied by a statement of basis or fact sheet and must be based on the administrative record. In preparing your draft permit decision, the following provisions of subpart A of this part apply (subject to the following modifications):

- (1) Section 124.1 Purpose and Scope. All paragraphs.
- (2) Section 124.2 Definitions. All paragraphs.
- (3) Section 124.3 Application for a permit. All paragraphs except paragraphs (c), (d), (f) and (g) of this section apply.
- (4) Section 124.4 Consolidation of permit processing. All paragraphs apply, however, in the context of the RCRA standardized permit use the reference to §124.208 instead of the reference to §124.10.
- (5) Section 124.6 Draft permits. This section does not apply to the RCRA standardized permit; procedures in this subpart apply instead.
- (6) Section 124.7 Statement of basis. The entire section applies.
- (7) Section 124.8 Fact sheet. All paragraphs apply, however, in the context of the RCRA standardized permit use the reference to §124.208 instead of the reference to §124.10.
- (8) Section 124.9 Administrative record for draft permits when EPA is the permitting authority. All paragraphs apply, however, in the context of the RCRA standardized permit use the reference to §124.204(c) instead of §124.6.
- (9) Section 124.10 Public notice of permit actions and public comment period. Only §§ 124.10(c)(1)(ix) and (x)(A) apply to the RCRA standardized permit. Most of § 124.10 does not apply to the RCRA standardized permit; §§ 124.207, 124.208, and 124.209 apply instead.

**§ 124.205 What must I do as the Director of the regulatory agency to prepare a final**



**standardized permit?**

As Director of the regulatory agency you must consider all comments received during the public comment period (see § 124.208) in making your final permit decision. In addition, many requirements in subpart A apply of this part to the public comment period, public hearings, and preparation of your final permit decision. In preparing a final permit decision, the following provisions of subpart A of this part apply (subject to the following modifications):

- (a) Section 124.1 *Purpose and Scope*. All paragraphs.
- (b) Section 124.2 *Definitions*. All paragraphs.
- (c) Section 124.11 *Public comments and requests for public hearings*. This section does not apply to the RCRA standardized permit; the procedures in § 124.208 apply instead.
- (d) Section 124.12 *Public hearings*. Paragraphs (b), (c), and (d) apply.
- (e) Section 124.13 *Obligation to raise issues and provide information during the public comment period*. The entire section applies, however, in the context of the RCRA standardized permit use references to § 124.208 instead of references to § 124.10.
- (f) Section 124.14 *Reopening of the public comment period*. All paragraphs apply, however, in the context of the RCRA standardized permit, use the following references: in § 124.14(b)(1) use reference to § 124.204 instead of § 124.6; in § 124.14(b)(3) use reference to § 124.208 instead of § 124.10; in § 124.14(c) use references to § 124.207 instead of § 124.10.
- (g) Section 124.15 *Issuance and effective date of permit*. All paragraphs apply, however, in the context of the RCRA standardized permit use the reference to § 124.208 instead of § 124.10.
- (h) Section 124.16 *Stays of contested permit conditions*. All paragraphs apply.
- (i) Section 124.17 *Response to comments*. This section does not apply to the RCRA

standardized permit; procedures in § 124.209 apply instead.

(j) Section 124.18 Administrative record for final permit when EPA is the permitting authority. All paragraphs apply, however, use references to §124.209 instead of §124.17.

(k) Section 124.19 Appeal of RCRA, UIC, and PSD permits. All paragraphs apply.

(l) Section 124.20 Computation of time. All paragraphs apply.

**§ 124.206 In what situations may I require a facility owner or operator to apply for an individual permit?**

(a) If you determine that a facility is not eligible for the standardized permit, you must inform the facility owner or operator that they must apply for an individual permit.

(b) You may require any facility that has a standardized permit to apply for and obtain an individual RCRA permit. Any interested person may petition you to take action under this paragraph. Cases where you may require an individual RCRA permit include, but are not limited to, the following:

(1) The facility is not in compliance with the terms and conditions of the standardized RCRA permit.

(2) Circumstances have changed since the time the facility owner or operator applied for the standardized permit, so that the facility's hazardous waste management practices are no longer appropriately controlled under the standardized permit.

(c) You may require any facility authorized by a standardized permit to apply for an individual RCRA permit only if you have notified the facility owner or operator in writing that an individual permit application is required. You must include in this notice a brief statement of the reasons for your decision, a statement setting a deadline for the owner or operator to file the application, and a statement that on the effective date of the individual RCRA permit the

standardized permit as it applies to their facility automatically terminates. You may grant additional time upon request from the facility owner or operator.

(d) When you issue an individual RCRA permit to an owner or operator otherwise subject to a standardized RCRA permit, the standardized permit for their facility will automatically cease to apply on the effective date of the individual permit.

#### OPPORTUNITIES FOR PUBLIC INVOLVEMENT IN THE STANDARDIZED PERMIT PROCESS

#### **§ 124.207 What are the requirements for public notices?**

(a) You, as the Director, must provide public notice of your draft permit decision and must provide an opportunity for the public to submit comments and request a hearing on that decision.

You must provide the public notice to:

- (i) The applicant;
- (ii) Any other agency which you know has issued or is required to issue a RCRA permit for the same facility or activity (including EPA when the draft permit is prepared by the State);
- (iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected States;
- (iv) To everyone on the facility mailing list developed according to the requirements in § 124.10(c)(1)(ix); and
- (v) To any units of local government having jurisdiction over the area where the facility is proposed to be located and to each State agency having any authority under State law with respect to the construction or operation of the facility.

(b) You must issue the public notice according to the following methods:

- (1) Publication in a daily or weekly major local newspaper of general circulation and

broadcast over local radio stations;

(2) When the program is being administered by an approved State, in a manner constituting legal notice to the public under State law; and

(3) Any other method reasonably calculated to give actual notice of the draft permit decision to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(c) You must include the following information in the public notice:

(1) The name and telephone number of the contact person at the facility.

(2) The name and telephone number of your contact office, and a mailing address to which people may direct comments, information, opinions, or inquiries.

(3) An address to which people may write to be put on the facility mailing list.

(4) The location where people may view and make copies of the draft standardized permit and the notice of intent and supporting documents.

(5) A brief description of the facility and proposed operations, including the address or a map (for example, a sketched or copied street map) of the facility location on the front page of the notice.

(6) The date that the facility owner or operator submitted the notice of intent and supporting documents.

(d) At the same time that you issue the public notice under this section, you must place the draft standardized permit (including both the uniform portion and the supplemental portion, if any), the notice of intent and supporting documents, and the statement of basis or fact sheet in a location accessible to the public in the vicinity of the facility or at your office.

**§ 124.208 What are the opportunities for public comments and hearings on draft permit**

**decisions?**

(a) The public notice that you issue under § 124.207 must allow at least 45 days for people to submit written comments on your draft permit decision. This time is referred to as the public comment period. You must automatically extend the public comment period to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(b) During the public comment period, any interested person may submit written comments on the draft permit and may request a public hearing. If someone wants to request a public hearing, they must submit their request in writing to you. Their request must state the nature of the issues they propose to raise during the hearing.

(c) You must hold a public hearing whenever you receive a written notice of opposition to a standardized permit and a request for a hearing within the public comment period under paragraph (a) of this section. You may also hold a public hearing at your discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(d) Whenever possible, you must schedule a hearing under this section at a location convenient to the nearest population center to the facility. You must give public notice of the hearing at least 30 days before the date set for the hearing. (You may give the public notice of the hearing at the same time you provide public notices of the draft permit, and you may combine the two notices).

(e) You must give public notice of the hearing according to the methods in § 124.207(a) and (b). The hearing must be conducted according to the procedures in § 124.12(b), (c), and (d).

(f) In their written comments and during the public hearing, if held, interested parties may provide comments on the draft permit decision. These comments may include, but are not limited

to, the facility's eligibility for the standardized permit, the tentative supplemental conditions you proposed, and the need for additional supplemental conditions.

**§ 124.209 What are the requirements for responding to comments?**

(a) At the time you issue a final standardized permit, you must also respond to comments received during the public comment period on the draft permit. Your response must:

(1) Specify which additional conditions (i.e., those in the supplemental portion), if any, you changed in the final permit, and the reasons for the change.

(2) Briefly describe and respond to all significant comments on the facility's ability to meet the general requirements (i.e., those terms and conditions in the uniform portion) and on any additional conditions necessary to protect human health and the environment raised during the public comment period or during the hearing.

(3) Be available to the public.

(b) You may request additional information from the facility owner or operator or inspect the facility if you need additional information to adequately respond to significant comments or to make decisions about conditions you may need to add to the supplemental portion of the standardized permit.

(c) If you are the Director of an EPA permitting agency, you must include in the administrative record for your final permit decision any documents cited in the response to comments. If new points are raised or new material supplied during the public comment period, you may document your response to those matters by adding new materials to the administrative record.

**§ 124.210 May I, as an interested party in the permit process, appeal a final standardized permit?**

You may petition for administrative review of the Director's final permit decision, including his or her decision that the facility is eligible for the standardized permit, according to the procedures of § 124.19. However, the terms and conditions of the uniform portion of the standardized permit are not subject to administrative review under this provision.

#### MAINTAINING A STANDARDIZED PERMIT

##### **§ 124.211 What types of changes may I make to my standardized permit?**

You may make both routine and significant changes. For the purposes of this section:

- (a) "routine changes" are any changes that qualify as a class 1 or 2 permit modification under 40 CFR 270.42, Appendix I, and
- (b) "significant changes" are any changes that
  - (1) qualify as a class 3 permit modification under 40 CFR 270.42, Appendix I,
  - (2) are not explicitly identified in 40 CFR 270.42, Appendix I, or
  - (3) amend any terms or conditions in the supplemental portion of your standardized permit.

##### **§ 124.212 What procedures must I follow to make routine changes?**

- (a) You can make routine changes without obtaining approval from the Director.
- (b) If the routine changes you make amend the information you submitted under 40 CFR 270.275 with your notice of intent to operate under the standardized permit, then before you make the routine changes you must:

- (1) submit to the Director the revised information pursuant to 40 CFR 270.275(a), and
- (2) provide notice of the changes to the facility mailing list and to state and local governments in accordance with the procedures in § 124.10(c)(1)(ix) and (x).

##### **§ 124.213 What procedures must I follow to make significant changes?**

- (a) You must first provide notice of and conduct a public meeting.

(1) *Public Meeting.* You must hold a meeting with the public to solicit questions from the community and inform the community of your proposed modifications to your hazardous waste management activities. You must post a sign-in sheet or otherwise provide a voluntary opportunity for people attending the meeting to provide their names and addresses.

(2) *Public Notice.* At least 30 days before you plan to hold the meeting you must issue a public notice in accordance with the requirements of § 124.31(d).

(b) After holding the public meeting, you must submit a modification request to the Director that:

(1) Describes the exact change(s) you want and whether they are changes to information you provide under 40 CFR 270.275 or to terms and conditions in the supplemental portion of your standardized permit;

(2) Explains why the modification is needed, and

(3) Includes a summary of the public meeting under paragraph (a), along with the list of attendees and their addresses and copies of any written comments or materials they submitted at the meeting.

(c) Once the Director receives your modification request, he or she must make a tentative determination within 120 days to approve or disapprove your request.

(d) After the Director makes this tentative determination, the procedures in § 124.205 and §§ 124.207 through 124.210 for processing an initial request for coverage under the standardized permit apply to making the final determination on the modification request.

## **Part 260 - Hazardous Waste Management System: General**

8. The authority citation for Part 260 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, and 6974.



9. In § 260.10, the first sentence of paragraph (2) of the definition of “facility” is revised to read as follows:

**§ 260.10 Definitions**

\* \* \* \* \*

Facility \* \* \*

(2) For the purpose of implementing corrective action under 40 CFR 264.101 or 267.101, all contiguous property under the control of the owner or operator seeking a permit under subtitle C of RCRA.

\* \* \*

\* \* \* \* \*

10. Part 267 is added to read as follows:

**PART 267 - STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT**

**SUBPART A - General**

Sec.

267.1 What are the purpose, scope and applicability of this part?

267.2 What is the relationship to interim status standards?

267.3 How does this part affect an imminent hazard action?

**SUBPART B - General Facility Standards**

267.10 Does this subpart apply to me?

267.11 What must I do to comply with this subpart?

267.12 How do I obtain an identification number?

267.13 What are my waste analysis requirements?

267.14 What are my security requirements?

267.15 What are my general inspection requirements?

267.16 What training must my employees have?

267.17 What are the requirements for managing ignitable, reactive, or incompatible wastes?

267.18 What are the standards for selecting the location of my facility?

### **SUBPART C - Preparedness and Prevention**

267.30 Does this subpart apply to me?

267.31 What are the general design and operation standards?

267.32 What equipment am I required to have?

267.33 What are the testing and maintenance requirements for the equipment?

267.34 When must personnel have access to communication equipment or an alarm system?

267.35 How do I ensure access for personnel and equipment during emergencies?

267.36 What arrangements must I make with local authorities for emergencies?

### **SUBPART D - Contingency Plan and Emergency Procedures**

267.50 Does this subpart apply to me?

267.51 What is the purpose of the contingency plan and how do I use it?

267.52 What must be in the contingency plan?

267.53 Who must have copies of the contingency plan?

267.54 When must I amend the contingency plan?

267.55 What is the role of the emergency coordinator?

267.56 What are the required emergency procedures for the emergency coordinator?

267.57 What must the emergency coordinator do after an emergency?

267.58 What notification and record keeping must I do after an emergency?

**SUBPART E - Record keeping, reporting, and notifying**

267.70 Does this subpart apply to me?

267.71 What information must I keep?

267.72 Who sees the records and how long do I keep them?

267.73 What reports must I prepare and to whom do I send them?

267.74 What notifications must I make?

**SUBPART F - Releases from solid waste management units**

267.90 Who must comply with this section?

267.101 What must I do to address corrective action for solid waste management units?

**SUBPART G Closure**

267.110 Does this subpart apply to me?

267.111 What general standards must I meet when I stop operating the unit?

267.112 What procedures must I follow?

267.113 Will the public have the opportunity to comment on the plan?

267.114 What happens if the plan is not approved?

267.115 After I stop operating, how long until I must close?

267.116 What must I do with contaminated equipment, structure, and soils?

267.117 How do I certify closure?

**SUBPART H - Financial Requirements**

267.140 Who must comply with this Subpart, and briefly, what do they have to do?

267.141 Definitions of terms as used in this subpart.

267.142 Cost estimate for closure.

267.143 Financial assurance for closure.

267.147 Liability requirements.

267.148 Incapacity of owners or operators, guarantors, or financial institutions.

267.150 State assumption of responsibility.

### **SUBPART I—Use and Management of Containers**

267.170 Does this subpart apply to me?

267.171 What standards apply to the containers?

267.172 What are the inspection requirements?

267.173 What standards apply to the container storage areas?

267.174 What special requirements must I meet for ignitable or reactive waste?

267.175 What special requirements must I meet for incompatible wastes?

267.176 What must I do when I want to stop using the containers?

267.177 What air emission standards apply?

### **SUBPART J - Tank systems**

267.190 Does this subpart apply to me?

267.191 What are the required design and construction standards for new tank systems or components?

267.192 What handling and inspection procedures must I follow during installation of new tank systems?

267.193 What testing must I do?

267.194 What installation requirements must I follow?

267.195 What are the secondary containment requirements?

267.196 What are the required devices for secondary containment and what are their design, operating and installation requirements?

267.197 What are the requirements for ancillary equipment?

267.198 What are the general operating requirements for my tank systems?

267.199 What inspection requirements must I meet?

267.200 What must I do in case of a leak or a spill?

267.201 What must I do when I stop operating the tank system?

267.202 What special requirements must I meet for ignitable or reactive wastes?

267.203 What special requirements must I meet for incompatible wastes?

267.204 What air emission standards apply?

#### **SUBPART DD--Containment buildings**

267.1100 Does this subpart apply to me?

267.1101 What design and operating standards must my containment building meet?

267.1102 What other requirements must I meet to prevent releases?

267.1103 What additional design and operating standards apply if liquids will be in my containment building?

267.1104 How may I obtain a waiver from secondary containment requirements?

267.1105 What do I do if my containment building contains areas both with and without secondary containment?

267.1106 What do I do if I detect a release?

267.1107 Can a containment building itself be considered secondary containment?

267.1108 What must I do when I stop operating the containment building?

Authority: 42 U.S.C. 6902, 6912(a), 6924-6926, and 6930.

#### **SUBPART A - General**

**§ 267.1 What are the purpose, scope and applicability of this new part?**

(a) The purpose of this part is to establish minimum national standards which define the acceptable management of hazardous waste under a 40 CFR part 270, subpart I standardized permit.

(b) The regulations in this part apply to owners and operators of facilities who treat or store hazardous waste under a 40 CFR part 270, subpart I standardized permit, except as provided otherwise in 40 CFR part 261 subpart A, or 40 CFR 264.1(f) and (g).

### **§ 267.2 What is the relationship to interim status standards?**

If you are a facility owner or operator who has fully complied with the requirements for interim status - as defined in section 3005(e) of RCRA and regulations under 40 CFR 270.70 - you must comply with the regulations specified in 40 CFR part 265 instead of the regulations in this part, until final administrative disposition of the standardized permit application is made, except as provided under 40 CFR part 264, subpart S.

### **§ 267.3 How does this part affect an imminent hazard action?**

Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to section 7003 of RCRA.

## **SUBPART B - General Facility Standards**

### **§ 267.10 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b).

### **§ 267.11 What must I do to comply with this subpart?**

To comply with this subpart, you must obtain an identification number, and follow the requirements below for waste analysis, security, inspections, training, special waste handling, and location standards.

**§ 267.12 How do I obtain an identification number?**

You must apply to EPA for an EPA identification number following the EPA notification procedures and using EPA form 8700-12. You may obtain information and required forms from your state hazardous waste regulatory agency or from your EPA regional office.

**§ 267.13 What are my waste analysis requirements?**

(a) Before you treat or store any hazardous wastes, you must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information needed to treat or store the waste to comply with this part and 40 CFR part 268.

(1) You may include data in the analysis that was developed under 40 CFR part 261, and published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

(2) You must repeat the analysis as necessary to ensure that it is accurate and up to date. At a minimum, you must repeat the analysis if the process or operation generating the hazardous wastes has changed.

(b) You must develop and follow a written waste analysis plan that describes the procedures you will follow to comply with paragraph (a) of this section. You must keep this plan at the facility. At a minimum, the plan must specify all of the following:

(1) The hazardous waste parameters that you will analyze and the rationale for selecting these parameters (that is, how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section).

(2) The test methods you will use to test for these parameters.

(3) The sampling method you will use to obtain a representative sample of the waste to be

analyzed. You may obtain a representative sample using either:

(i) One of the sampling methods described in appendix I of 40 CFR part 261; or

(ii) An equivalent sampling method.

(4) How frequently you will review or repeat the initial analysis of the waste to ensure that the analysis is accurate and up to date.

(5) Where applicable, the methods you will use to meet the additional waste analysis requirements for specific waste management methods as specified in 40 CFR 264.17, 264.1034(d), 264.1063(d), and 264.1083.

#### **§ 267.14 What are my security requirements?**

(a) You must prevent, and minimize the possibility for, livestock and unauthorized people from entering the active portion of your facility, unless you are exempt from the requirements because:

(1) Physical contact with the waste, structures, or equipment within the active portion of the facility will not injure people or livestock; and

(2) Disturbing the waste or equipment will not cause a violation of the requirements of this part.

(b) You must keep records at the facility justifying the reasons for your waiver under (a)(1) and (2) of this section.

(c) Unless you are exempt under paragraphs (a) (1) and (2) of this section, your facility must have:

(1) A 24-hour surveillance system (for example, television monitoring or surveillance by guards or facility personnel) that continuously monitors and controls entry onto the active portion of the facility; or



(2) An artificial or natural barrier (for example, a fence in good repair or a fence combined with a cliff) that completely surrounds the active portion of the facility; and

(3) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (for example, an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(d) Unless you are exempt under paragraphs (a) (1) and (2) of this section, you must post a sign at each entrance to the active portion of a facility, and at other prominent locations, in sufficient numbers to be seen from any approach to this active portion. The sign must bear the legend "Danger-Unauthorized Personnel Keep Out." The legend must be in English and in any other language predominant in the area surrounding the facility (for example, facilities in counties bordering the Canadian province of Quebec must post signs in French, and facilities in counties bordering Mexico must post signs in Spanish), and must be legible from a distance of at least 25 feet. You may use existing signs with a legend other than "Danger-Unauthorized Personnel Keep Out" if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

#### **§ 267.15 What are my general inspection requirements?**

(a) You must inspect your facility for malfunctions and deterioration, operator errors, and discharges that may be causing, or may lead to:

(1) Release of hazardous waste constituents to the environment; or

(2) A threat to human health. You must conduct these inspections often enough to identify problems in time to correct them before they result in harm to human health or the environment.

(b) You must develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such

as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(1) You must keep this schedule at the facility.

(2) The schedule must identify the equipment and devices you will inspect and what problems you look for, such as malfunctions or deterioration of equipment (for example, inoperative sump pump, leaking fitting, etc.).

(3) The frequency of your inspections may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies required in §§ 267.174, 267.193, 267.195, 267.1103, and 40 CFR 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089, where applicable.

(c) You must remedy any deterioration or malfunction of equipment or structures that the inspection reveals in time to prevent any environmental or human health hazard. Where a hazard is imminent or has already occurred, you must take remedial action immediately.

(d) You must record all inspections. You must keep these records for at least three years from the date of inspection. At a minimum, you must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

#### **§ 267.16 What training must my employees have?**

(a) Your facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's

compliance with the requirements of this part. You must ensure that this program includes all the elements described in the documents that are required under paragraph (d)(3) of this section.

(1) A person trained in hazardous waste management procedures must direct this program, and must teach facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to their employment positions.

(2) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by including instruction on emergency procedures, emergency equipment, and emergency systems, including all of the following, where applicable:

(i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment.

(ii) Key parameters for automatic waste feed cut-off systems.

(iii) Communications or alarm systems.

(iv) Response to fires or explosions.

(v) Response to ground water contamination incidents.

(vi) Shutdown of operations.

(b) Facility personnel must successfully complete the program required in paragraph (a) of this section within six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of your standardized permit must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this section.

(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section.

(d) You must maintain the following documents and records at your facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under paragraph (d)(1) of this section. This description must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this section;

(4) Records that document that facility personnel have received and completed the training or job experience required under paragraphs (a), (b), and (c) of this section.

(e) You must keep training records on current personnel until your facility closes. You must keep training records on former employees for at least three years from the date the employee last worked at your facility. Personnel training records may accompany personnel transferred within your company.

**§ 267.17 What are the requirements for managing ignitable, reactive, or incompatible wastes?**

(a) You must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste by following these requirements:

(1) You must separate these wastes and protect them from sources of ignition or reaction such as: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (for example, from heat-producing chemical reactions), and radiant heat.

(2) While ignitable or reactive waste is being handled, you must confine smoking and open

flames to specially designated locations.

(3) “No Smoking” signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) If you treat or store ignitable or reactive waste, or mix incompatible waste or incompatible wastes and other materials, you must take precautions to prevent reactions that:

(1) Generate extreme heat or pressure, fire or explosions, or violent reactions.

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment.

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions.

(4) Damage the structural integrity of the device or facility.

(5) Threaten human health or the environment in any similar way.

(c) You must document compliance with paragraph (a) or (b) of this section. You may base this documentation on references to published scientific or engineering literature, data from trial tests (for example bench scale or pilot scale tests), waste analyses (as specified in § 267.13), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

#### **§ 267.18 What are the standards for selecting the location of my facility?**

(a) You may not locate portions of new facilities where hazardous waste will be treated or stored within 61 meters (200 feet) of a fault that has had displacement in Holocene time.

(1) “Fault” means a fracture along which rocks on one side have been displaced with respect to those on the other side.

(2) “Displacement” means the relative movement of any two sides of a fault measured in

any direction.

(3) “Holocene” means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

[Note to paragraph (a)(3): Procedures for demonstrating compliance with this standard are specified in 40 CFR 270.14(b)(11). Facilities which are located in political jurisdictions other than those listed in appendix VI of 40 CFR Part 264, are assumed to be in compliance with this requirement.]

(B) If your facility is located in a 100-year flood plain, it must be designed, constructed, operated, and maintained to prevent washout or any hazardous waste by a 100-year flood, *unless* you can demonstrate to the Director’s satisfaction that you will safely remove the waste, before flood waters can reach the facility, to a location where the wastes will not be vulnerable to flood waters.

(1) “100-year flood plain” means any land area that is subject to a one percent or greater chance of flooding in any given year from any source.

(2) “Washout” means the movement of hazardous waste from the active portion of the facility as a result of flooding.

(3) “100-year flood” means a flood that has a one percent chance of being equaled or exceeded in any given year.

## **SUBPART C - Preparedness and Prevention**

### **§ 267.30 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b).

### **§ 267.31 What are the general design and operation standards?**

You must design, construct, maintain, and operate your facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment.

**§ 267.32 What equipment am I required to have?**

Your facility must be equipped with all of the following, unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel.

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams.

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment.

(d) Water at adequate volume and pressure to supply water hose streams, or foam-producing equipment, or automatic sprinklers, or water spray systems.

**§ 267.33 What are the testing and maintenance requirements for the equipment?**

You must test and maintain all required facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, as necessary, to assure its proper operation in time of emergency.

**§ 267.34 When must personnel have access to communication equipment or an alarm system?**

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all

personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the device is not required under § 267.32.

(b) If just one employee is on the premises while the facility is operating, that person must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless not required under § 267.32.

**§ 267.35 How do I ensure access for personnel and equipment during emergencies?**

You must maintain enough aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

**§ 267.36 What arrangements must I make with local authorities for emergencies?**

(a) You must attempt to make the following arrangements, as appropriate for the type of waste handled at your facility and the potential need for the services of these organizations:

(1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes.

(2) Agreements designating primary emergency authority to a specific police and a specific fire department where more than one police and fire department might respond to an emergency, and agreements with any others to provide support to the primary emergency authority.

(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers.



(4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(b) If State or local authorities decline to enter into such arrangements, you must document the refusal in the operating record.

#### **SUBPART D - Contingency Plan and Emergency Procedures**

##### **§ 267.50 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b).

##### **§ 267.51 What is the purpose of the contingency plan and how do I use it?**

(a) You must have a contingency plan for your facility. You must design the plan to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) You must implement the provisions of the plan immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

##### **§ 267.52 What must be in the contingency plan?**

(a) Your contingency plan must:

(1) Describe the actions facility personnel will take to comply with §§ 267.51 and 267.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(2) Describe all arrangements agreed upon under § 267.36 by local police departments,

fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.

(3) List names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see § 267.55), and you must keep the list up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(4) Include a current list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. In addition, you must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(5) Include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. You must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(b) If you have already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan under 40 CFR part 112, or part 1510 of chapter V, or some other emergency or contingency plan, you need only amend that plan to incorporate hazardous waste management provisions that will comply with the requirements of this part.

**§ 267.53 Who must have copies of the contingency plan?**

(a) You must maintain a copy of the plan with all revisions at the facility; and

(b) You must submit a copy with all revisions to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to

provide emergency services.

**§ 267.54 When must I amend the contingency plan?**

You must review, and immediately amend the contingency plan, if necessary, whenever:

- (a) The facility permit is revised.
- (b) The plan fails in an emergency.
- (c) You change the facility (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency.
- (d) You change the list of emergency coordinators.
- (e) You change the list of emergency equipment.

**§ 267.55 What is the role of the emergency coordinator?**

At least one employee must be either on the facility premises or on call at all times (that is, available to respond to an emergency by reaching the facility within a short period of time) who has the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

**§ 267.56 What are the required emergency procedures for the emergency coordinator?**

- (a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:
  - (1) Activate internal facility alarm or communication systems, where applicable, to notify

all facility personnel, and

(2) Notify appropriate State or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must:

(1) Immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(2) Assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion. For example the assessment would consider the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions.

(c) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and

(2) He must immediately notify either the government official designated as the on-scene coordinator for that geographical area, (in the applicable regional contingency plan under part 1510 of this title) or the National Response Center (using their 24-hour toll-free number 800/424-8802). The report must include:

(i) Name and telephone number of the reporter.

(ii) Name and address of facility.

(iii) Time and type of incident (for example, a release or a fire).

(iv) Name and quantity of material(s) involved, to the extent known.

(v) The extent of injuries, if any.

(vi) The possible hazards to human health or the environment outside the facility.

(d) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing release waste, and removing or isolating containers.

(e) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, when appropriate.

**§ 267.57 What must the emergency coordinator do after an emergency?**

(a) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(b) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed.

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

**§ 267.58 What notification and record keeping must I do after an emergency?**

(a) You must notify the Regional Administrator, and appropriate State and local authorities, that the facility is in compliance with § 267.57 (b) before operations are resumed in the affected area(s) of the facility.

(b) You must note the time, date, and details of any incident that requires implementing the contingency plan in the operating record. Within 15 days after the incident, you must submit a written report on the incident to the Regional Administrator. You must include the following in the report:

- (1) The name, address, and telephone number of the owner or operator.
- (2) The name, address, and telephone number of the facility.
- (3) The date, time, and type of incident (e.g., fire, explosion).
- (4) The name and quantity of material(s) involved.
- (5) The extent of injuries, if any.
- (6) An assessment of actual or potential hazards to human health or the environment, where this is applicable.
- (7) The estimated quantity and disposition of recovered material that resulted from the incident.

## **SUBPART E - Record keeping, reporting, and notifying**

### **§ 267.70 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b). In addition, you must comply with the manifest requirements of 40 CFR part 262 whenever a shipment of hazardous waste is initiated from your facility.

### **§ 267.71 What information must I keep?**

(a) You must keep a written operating record at your facility.

(b) You must record the following information, as it becomes available, and maintain the operating record until you close the facility:

(1) A description and the quantity of each type of hazardous waste generated, and the method(s) and date(s) of its storage and/or treatment at the facility as required by Appendix I of 40 CFR part 264;

(2) The location of each hazardous waste within the facility and the quantity at each location;

(3) Records and results of waste analyses and waste determinations you perform as specified in §§ 267.13, 267.17, and 40 CFR 264.1034, 264.1063, 264.1083, and 268.7;

(4) Summary reports and details of all incidents that require you to implement the contingency plan as specified in § 267.58(b));

(5) Records and results of inspections as required by § 267.15(d) (except you need to keep these data for only three years);

(6) Monitoring, testing or analytical data, and corrective action when required by subpart F of this part and §§ 267.191, 267.193, 267.195, and 40 CFR 264.1034(c) through 264.1034(f), 264.1035, 264.1063(d) through 264.1063(i), 264.1064, 264.1088, 264.1089, and 264.1090;

(7) All closure cost estimates under § 267.142;

(8) Your certification, at least annually, that you have a program in place to reduce the volume and toxicity of hazardous waste that you generate to the degree that you determine to be economically practicable; and that the proposed method of treatment or storage is that practicable method currently available to you that minimizes the present and future threat to human health and the environment;

(9) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by you under 40 CFR 268.7; and

(10) For an on-site storage facility, the information in the notice (except the manifest number), and the certification and demonstration if applicable, required you under 40 CFR 268.7.

**§ 267.72 Who sees the records and how long do I keep them?**

(a) You must furnish all records, including plans, required under this part upon the request of any officer, employee, or representative of EPA who is duly designated by the Administrator, and make them available at all reasonable times for inspection.

(b) The retention period for all records required under this part is extended automatically during the course of any unresolved enforcement action involving the facility or as requested by the Administrator.

**§ 267.73 What reports must I prepare and to whom who do I send them?**

You must prepare a biennial report and other reports listed in paragraph (b) of this section.

**(a) Biennial Report**

You must prepare and submit a single copy of a biennial report to the Regional Administrator by March 1 of each even numbered year. The biennial report must be submitted on EPA form 8700-13B. The report must cover facility activities during the previous calendar year and must include:

- (1) The EPA identification number, name, and address of the facility;
- (2) The calendar year covered by the report;
- (3) The method of treatment or storage for each hazardous waste;
- (4) The most recent closure cost estimate under § 267.142; and,



(5) A description of the efforts undertaken during the year to reduce the volume and toxicity of generated waste.

(6) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.

(7) The certification signed by you.

(b) Additional reports.

In addition to submitting the biennial reports, you must also report to the Regional Administrator:

(1) Releases, fires, and explosions as specified in § 267.58(b) ;

(2) Facility closures specified in § 267.117; and,

(3) As otherwise required by subparts I, J, and DD of this part and part 264, subparts AA, BB, CC.

#### **§ 267.74 What notifications must I make?**

Before transferring ownership or operation of a facility during its operating life, you must notify the new owner or operator in writing of the requirements of this part and 40 CFR part 270, subpart I.

### **SUBPART F - Releases from solid waste management units**

#### **§ 267.90 Who must comply with this section?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b), or unless your facility already has a permit that imposes requirements for corrective action under 40 CFR 264.101.

**§ 267.91 - 100 [Reserved]****§ 267.101 What must I do to address corrective action for solid waste management units?**

(a) You must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(b) The Regional Administrator will specify corrective action in the supplemental portion of your standardized permit in accordance with this section and 40 CFR part 264, subpart S. The Regional Administrator will include in the supplemental portion of your standardized permit schedules of compliance for corrective action (where corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing corrective action.

(c) You must implement corrective action beyond the facility property boundary, where necessary to protect human health and the environment, unless you demonstrate to the satisfaction of the Regional Administrator that, despite your best efforts, you were unable to obtain the necessary permission to undertake such actions. You are not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off -site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. You must provide assurances of financial responsibility for such corrective action.

(d) You do not have to comply with this section if you are the owner or operator of a remediation waste site unless your site is part of a facility that is subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

**SUBPART G Closure****§ 267.110 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b).

**§ 267.111 What general standards must I meet when I stop operating the unit?**

You must close the storage and treatment units in a manner that:

- (a) Minimizes the need for further maintenance; and
- (b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and
- (c) Meets the closure requirements of this subpart and the requirements of §§ 267.176, 267.201, and 267.1108.

**§ 267.112 What procedures must I follow?**

To close a facility, you must have an approved closure plan and follow notification requirements.

- (a) Submit a written closure plan.
  - (1) You must have a written closure plan. You must submit the plan at least 180 days prior to closure. The Director must approve the closure plan before closure work at the facility begins, and the plan will become a condition of any RCRA permit.
  - (2) The Director's approval of the plan must ensure that the approved plan is consistent with §§ 267.111 through 267.115, 267.176, 267.201, and 267.1108.
- (b) Satisfy the requirements for content of closure plan.

The closure plan must identify steps necessary to perform partial and/or final closure of the facility. The closure plan must include, at least:

(1) A description of how each hazardous waste management unit at the facility subject to this subpart will be closed following § 267.111.

(2) A description of how final closure of the facility will be conducted in accordance with § 267.111. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility.

(3) An estimate of the maximum inventory of hazardous wastes ever on site during the active life of the facility and a detailed description of the methods you will use during partial and/or final closure, such as methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of off-site hazardous waste management units to be used, if applicable.

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial or final closure. These might include procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;

(5) A detailed description of other activities necessary during the closure period to ensure that partial or final closure satisfies the closure performance standards.

(6) A schedule for closure of each hazardous waste management unit, and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities that allow tracking of progress of partial or final closure.

(c) You may submit a written request to the Director for a permit modification, following applicable procedures in 40 CFR 124.211 to amend the closure plan at any time before the

notification of final closure of the facility. You must include a copy of the amended closure plan with the written request for review or approval by the Director. The Director will approve, disapprove, or modify this amended plan in accordance with the procedures in 40 CFR 124.211 and 270.320.

(d) Notification before final closure.

(1) You must notify the Director in writing at least 45 days before the date that you expect to begin final closure of a treatment or storage tank, container storage, or containment building.

(2) The date when you “expect to begin closure” must be no later than 30 days after the date that any hazardous waste management unit receives the known final volume of hazardous wastes.

(3) If your facility’s permit is terminated, or if you are otherwise ordered, by judicial decree or final order under Section 3008 of RCRA, to cease receiving hazardous wastes or to close, then the requirements of this paragraph (d) do not apply. However, you must close the facility following the deadlines established in § 267.115.

**§ 267.113 Will the public have the opportunity to comment on the plan?**

(a) The Director will provide you and the public, through a newspaper notice, the opportunity to submit written comments on the plan and to request modifications to the plan no later than 30 days from the date of the notice. The Director will also, in response to a request or at his/her own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the closure plan.

(b) The Director will give public notice of the hearing 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

(c) The Director will approve, modify, or disapprove the plan within 60 days of its receipt.

**§ 267.114 What happens if the plan is not approved?**

(a) If the Director does not approve the plan, he must provide you with a detailed written statement of reasons for the refusal and you must then modify the plan or submit a new plan for approval within 30 days after receiving this written statement. The Director will approve or modify this new plan in writing within 60 days.

(b) If the Director modifies the plan, this modified plan becomes the approved closure plan. The Director must assure that the approved plan is consistent with §§ 267.111 through 267.115, §§267.176, 267.201, and 267.1108. The Director must mail a copy of the modified plan with a detailed statement of reasons for the modifications to you.

**§ 267.115 After I stop operating, how long until I must close?**

(a) Within 90 days after the final volume of hazardous waste is sent to a unit, you must treat or remove from the unit all hazardous wastes following the approved closure plan.

(b) You must complete final closure activities following the approved closure plan within 180 days after the final volume of hazardous wastes is sent to the unit.

(c) Nothing in this section precludes you from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved final closure plan at any time before or after notification of final closure.

**§ 267.116 What must I do with contaminated equipment, structure, and soils?**

You must properly dispose of or decontaminate all contaminated equipment, structures, and soils during the partial and final closure periods. By removing any hazardous wastes or hazardous constituents during partial and final closure, you may become a generator of hazardous waste and

must handle that waste following all applicable requirements of 40 CFR part 262.

**§ 267.117 How do I certify closure?**

Within 60 days of the completion of final closure of each unit under a part 270 subpart I standardized permit, you must submit to the Director, by registered mail, a certification that each hazardous waste management unit or facility, as applicable, has been closed following the specifications in the closure plan. Both you and an independent registered professional engineer must sign the certification. You must furnish documentation supporting the independent registered professional engineer's certification to the Director upon request until he releases you from the financial assurance requirements for closure under §267.143(i).

**SUBPART H - Financial Requirements**

**§ 267.140 Who must comply with this Subpart, and briefly, what do they have to do?**

(a) The regulations in this subpart apply to owners and operators who treat or store hazardous waste under a standardized permit, except as provided in § 267.1(b), or §267.140(d) below.

(b) The owner or operator must:

- (1) prepare a closure cost estimate as required in §267.142,
- (2) demonstrate financial assurance for closure as required in §267.143, and
- (3) demonstrate financial assurance for liability as required in §267.147.

(c) The owner or operator must notify the Regional Administrator if the owner or operator is named as a debtor in a bankruptcy proceeding under Title 11 (Bankruptcy), U. S. Code. (See also §267.148)

(d) States and the Federal government are exempt from the requirements of this subpart.

**§ 267.141 Definitions of terms as used in this subpart.**

(a) Closure plan means the plan for closure prepared in accordance with the requirements of § 267.112.

(b) Current closure cost estimate means the most recent of the estimates prepared in accordance with § 267.142 (a), (b), and (c).

(c) [Reserved]

(d) Parent corporation means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(e) [Reserved]

(f) The following terms are used in the specifications for the financial tests for closure and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

Assets means all existing and all probable future economic benefits obtained or controlled by a particular entity.

Current plugging and abandonment cost estimate means the most recent of the estimates prepared in accordance with § 144.62(a), (b), and (c) of this chapter.

Independently audited refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

Liabilities means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

Tangible net worth means the tangible assets that remain after deducting liabilities; such



assets would not include intangibles such as goodwill and rights to patents or royalties.

(g) In the liability insurance requirements the terms bodily injury and property damage shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

Accidental occurrence means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

Legal defense costs means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

Sudden accidental occurrence means an occurrence which is not continuous or repeated in nature.

(h) Substantial business relationship means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator.

#### **§ 267.142 Cost estimate for closure.**

(a) The owner or operator must have at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 267.111 through 267.115 and applicable closure requirements in §§ 267.176, 267.201, 267.1108.

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive; and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in § 267.141(d).) The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes that might have economic value.

(5) Within 30 days after submitting a closure plan under §267.112, revise the closure cost estimate so that it is in accordance with the plan.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 267.143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in §267.143(f)(2)(iii). The adjustment may be made by

recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in paragraphs (b)(1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) The owner or operator must keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with paragraph (a) of this section and, when this estimate has been adjusted in accordance with paragraph (b) of this section, the latest adjusted closure cost estimate.

#### **§ 267.143 Financial assurance for closure.**

The owner or operator must establish financial assurance for closure of each storage or treatment unit that he owns or operates. In establishing financial assurance for closure, the owner or operator must choose from the financial assurance mechanisms in paragraphs (a), (b), (c), (d), (e), (f), and (g) of this section. The owner or operator can also use a combination of mechanisms for a single facility if they meet the requirement in paragraph (h) of this section, or may use a single mechanism for multiple facilities as in paragraph (i) of this section. The Regional Administrator will release the owner or operator from the requirements of this section after the owner or operator meets the criteria under paragraph (j) of this section.

(a) Closure Trust Fund. Owners and operators can use the "closure trust fund," that is

specified in 40 CFR 264.143(a)(1), (2), and (a)(6)-(11). For purposes of this paragraph, the following provisions also apply:

(1) Payments into the trust fund for a new facility must be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over 3 years, whichever period is shorter. This period of time is hereafter referred to as the "pay-in period."

(2) For a new facility, the first payment into the closure trust fund must be made before the facility may accept the initial placement of waste. A receipt from the trustee must be submitted by the owner or operator to the Regional Administrator before this initial storage of waste. The first payment must be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period, except as provided in paragraph (h) of this section for multiple mechanisms. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The owner or operator determines the amount of each subsequent payment by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period. Mathematically, the formula is

$$\text{Next Payment} = (\text{Current Closure Estimate} - \text{Current Value of the Trust Fund}) \text{ Divided by } \text{Years Remaining in the Pay-In Period}.$$

(3) The owner or operator of a facility existing on the effective date of this paragraph can establish a trust fund to meet this paragraph's financial assurance requirements. If the value of the trust fund is less than the current closure cost estimate when a final approval of the permit is granted for the facility, the owner or operator must pay the difference into the trust fund within 60 days.

(4) The owner or operator may accelerate payments into the trust fund or deposit the full

amount of the closure cost estimate when establishing the trust fund. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (a)(2) or (a)(3) of this section.

(5) The owner or operator must submit a trust agreement with the wording specified in 40 CFR 264.151(a)(1).

(b) Surety Bond Guaranteeing Payment into a Closure Trust Fund. Owners and operators can use the "surety bond guaranteeing payment into a closure trust fund," as specified in 40 CFR 264.143(b), including the use of the surety bond instrument specified at 40 CFR 264.151(b), and the standby trust specified at 40 CFR 264.143(b)(3).

(c) Surety Bond Guaranteeing Performance of Closure. Owners and operators can use the "surety bond guaranteeing performance of closure," as specified in 40 CFR 264.143(c), the submission and use of the surety bond instrument specified at 40 CFR 264.151(c), and the standby trust specified at 40 CFR 264.143(c)(3).

(d) Closure Letter of Credit. Owners and operators can use the "closure letter of credit" specified in 40 CFR 264.143(d), the submission and use of the irrevocable letter of credit instrument specified in 40 CFR 264.151(d), and the standby trust specified in 40 CFR 264.143(d)(3).

(e) Closure Insurance. Owners and operators can use "closure insurance," as specified in 40 CFR 264.143(e), utilizing the certificate of insurance for closure specified at 40 CFR 264.151(e).

(f) Corporate financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified in this paragraph:

(1) Financial component.

(i) The owner or operator must satisfy one of the following three conditions:

(A) A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

(B) A ratio of less than 1.5 comparing total liabilities to net worth; or

(C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(ii) The tangible net worth of the owner or operator must be greater than:

(A) The sum of the current environmental obligations (see paragraph (f)(2)(i)(A)(1) of this section), including guarantees, covered by a financial test plus \$10 million except as provided in paragraph (f)(1)(ii)(B) of this section.

(B) \$10 million in tangible net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the environmental obligations (see paragraph (f)(2)(i)(A)(1) of this section) covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Regional Administrator.

(iii) The owner or operator must have assets located in the United States amounting to at least the sum of environmental obligations covered by a financial test as described in paragraph (f)(2)(i)(A)(1) of this section.

(2) Recordkeeping and reporting requirements.

(i) The owner or operator must submit the following items to the Regional Administrator:

(A) A letter signed by the owner's or operator's chief financial officer that:

(1) Lists all the applicable current types, amounts, and sums of environmental obligations covered by a financial test. These obligations include both obligations in the programs which EPA

directly operates and obligations where EPA has delegated authority to a State or approved a State's program. These obligations include, but are not limited to:

(i) Liability, closure, post-closure and corrective action cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR 264.101, 264.142, 264.144, 264.147, 265.142, 265.144, and 265.147.;

(ii) Cost estimates required for municipal solid waste management facilities under 40 CFR 258.71, 258.72, and 258.73;

(iii) Current plugging cost estimates required for UIC facilities under 40 CFR 144.62;

(iv) Cost estimates required for petroleum underground storage tank facilities under 40 CFR 280.93;

(v) Cost estimates required for PCB storage facilities under 40 CFR 761.65;

(vi) any financial assurance required under, or as part of an action undertaken under, the Comprehensive Environmental Response, Compensation, and Liability Act; and

(vii) any other environmental obligations that are assured through a financial test.

(2) Provides evidence demonstrating that the firm meets the conditions of either paragraph (f)(1)(i)(A) or (f)(1)(i)(B) or (f)(1)(i)(C) of this section and paragraphs (f)(1)(ii) and (f)(1)(iii) of this section.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Regional Administrator may evaluate

qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Regional Administrator deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Regional Administrator does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section within 30 days after the notification of disallowance.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that owner or operator satisfies paragraph (f)(1)(i)(B) or (f)(1)(i)(C) of this section that are different from data in the audited financial statements referred to in paragraph (f)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in paragraph (f)(1)(ii)(B) of this section, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.

(ii) The owner or operator of a new facility must submit the items specified in paragraph (f)(2)(i) of this section to the Regional Administrator at least 60 days before placing waste in the



facility.

(iii) After the initial submission of items specified in paragraph (f)(2)(i) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days following the close of the owner or operator's fiscal year. The Regional Administrator may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (f)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in this paragraph (f)(2) of this section or comply with the requirements of this paragraph (f) when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(B) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with paragraph (j) of this section.

(v) An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section cannot use the financial test to demonstrate financial assurance. Instead an owner or operator who no longer meets the requirements of paragraph (f)(1) of this section, must:

(A) Send notice to the Regional Administrator of intent to establish alternate financial assurance as specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section.

(B) Provide alternative financial assurance within 120 days after the end of such fiscal year.

(vi) The Regional Administrator may, based on a reasonable belief that the owner or

operator may no longer meet the requirements of paragraph (f)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (f)(2) of this section. If the Regional Administrator finds that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(g) Corporate Guarantee.

(1) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph (f) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording in 40 CFR 264.151(h). The certified copy of the guarantee must accompany the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(2) For a new facility the guarantee must be effective and the guarantor must submit the items in paragraph (g)(1) of this section and the items specified in paragraph (f)(2)(i) of this section to the Regional Administrator at least 60 days before the owner or operator places waste

in the facility.

(3) The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform closure at a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform closure (performance guarantee); or

(B) Establish a fully funded trust fund as specified in paragraph (a) of this section in the name of the owner or operator (payment guarantee).

(ii) The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this Subpart unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the Regional Administrator. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Regional Administrator as evidenced by the return receipts.

(iii) If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the Regional Administrator, obtain alternate financial assurance, and submit documentation for that alternate financial assurance to the Regional Administrator. If the owner or operator fails to provide alternate financial assurance and obtain the written approval of such alternative assurance from the Regional Administrator within the 90-day period, the guarantor must provide that alternate assurance in the name of the owner or operator and submit the necessary documentation for the alternative assurance to the Regional Administrator within 120 days of the cancellation notice.

(4) If a corporate guarantor no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must, within 90 days, obtain alternative assurance, and submit the

assurance to the Regional Administrator for approval. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days, and submit it to the Regional Administrator for approval.

(5) The guarantor is no longer required to meet the requirements of this paragraph (g) when:

(i) The owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The owner or operator is released from the requirements of this section in accordance with paragraph (j) of this section.

(h) Use of Multiple Financial Mechanisms An owner or operator may use more than one mechanism at a particular facility to satisfy the requirements of this section. The acceptable mechanisms are trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, the financial test, and the guarantee, except owners or operators cannot combine the financial test with the guarantee. The mechanisms must be as specified in paragraphs (a), (b), (d), (e), (f), and (g) of this section, except it is the combination of mechanisms rather than a single mechanism that must provide assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust for the other mechanisms. A single trust fund can be established for two or more mechanisms. The Regional Administrator may use any or all of the mechanisms to provide for closure of the facility.

(i) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial mechanism for multiple facilities, as specified in §264.143(h) of this chapter.

(j) Release of the owner or operator from the requirements of this section. Within 60

days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been completed in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator with a detailed written statement of any such reasons to believe that closure has not been conducted in accordance with the approved closure plan.

**§267.144 - 267.146 [Reserved]**

**§267.147 Liability requirements.**

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment or storage facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a) (1) through (a)(7) of this section:

(1) Trust fund for liability coverage. An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in 40 CFR 264.147(j).

(2) Surety bond for liability coverage. An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in 40 CFR 264.147(i).

(3) Letter of credit for liability coverage. An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in 40 CFR 264.147(h).

(4) Insurance for liability coverage. An owner or operator may meet the requirements of this section by obtaining liability insurance as specified in 40 CFR 264.147(a)(1).

(5) Financial test for liability coverage. An owner or operator may meet the requirements of this section by passing a financial test as specified in paragraph (f) of this section.

(6) Guarantee for liability coverage. An owner or operator may meet the requirements of this section by obtaining a guarantee as specified in paragraph (g) of this section.

(7) Combination of mechanisms. An owner or operator may demonstrate the required liability coverage through the use of combinations of mechanisms as allowed by 40 CFR 264.147(a)(6).

(8) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(7) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(7) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden accidental occurrence arising from the operation of a hazardous waste

treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(7) of this section.

(b) - (d) [Reserved]

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage from that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

(f) Financial test for Liability Coverage. An owner or operator that satisfies the requirements of this paragraph (f) may demonstrate financial assurance for liability up to the amount specified in this paragraph (f):

(1) Financial component.

(i) If using the financial test for only liability coverage, the owner or operator must have tangible net worth greater than the sum of the liability coverage to be demonstrated by this test plus \$10 million.

(ii) The owner or operator must have assets located in the United States amounting to at least the amount of liability covered by this financial test.

(iii) An owner or operator who is demonstrating coverage for liability and any other environmental obligations, including closure under §267.143(f), through a financial test must meet the requirements of §267.143(f).

(2) Recordkeeping and reporting requirements.

(i) The owner or operator must submit the following items to the Regional Administrator:

(A) A letter signed by the owner's or operator's chief financial officer that provides evidence demonstrating that the firm meets the conditions of paragraphs (f)(1)(i) and (f)(1)(ii) of this section.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Regional Administrator may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Regional Administrator deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Regional Administrator does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section within 30 days after the notification of disallowance.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that owner or operator satisfies paragraphs (f)(1)(i) and (ii) of this section that are different from data in the audited financial statements referred to in paragraph (f)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the



independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(ii) The owner or operator of a new facility must submit the items specified in paragraph (f)(2)(i) of this section to the Regional Administrator at least 60 days before placing waste in the facility.

(iii) After the initial submission of items specified in paragraph (f)(2)(i) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days following the close of the owner or operator's fiscal year. The Regional Administrator may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (f)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in this paragraph (f)(2) or comply with the requirements of this paragraph (f) when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(B) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with paragraph (j) of this section.

(v) An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section cannot use the financial test to demonstrate financial assurance. An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section, must:

(A) Send notice to the Regional Administrator of intent to establish alternate financial assurance as specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close the owner or operator's fiscal year for which the year-end

financial data show that the owner or operator no longer meets the requirements of this section.

(B) Provide alternative financial assurance within 120 days after the end of such fiscal year.

(vi) The Regional Administrator may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (f)(2) of this section. If the Regional Administrator finds that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(g) Guarantee for liability coverage. (1) Subject to paragraph (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (f)(3) of this section. The wording of the guarantee must be identical to the wording specified in 40 CFR 264.151(h)(2). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(2) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this

“substantial business relationship” and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) [Reserved]

(2)(i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of the State in which the guarantor is incorporated; and each State in which a facility covered by the guarantee is located have submitted a written statement to EPA that a guarantee executed as described in this section and 40 CFR 264.151(h)(2) is a legally valid and enforceable obligation in that State.

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) the non-U.S. corporation has identified a registered agent for service of process in each State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business; and

(B) the Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to EPA that a guarantee executed as described in this section and 40 CFR 264.151(h)(2) is a legally valid and enforceable obligation in that State.

**§ 267.148 Incapacity of owners or operators, guarantors, or financial institutions.**

(a) An owner or operator must notify the Regional Administrator by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in §§267.143(g) and 267.147 (g) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (§264.151(h)).

(b) An owner or operator who fulfills the requirements of §267.143 or §267.147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

**§267.149 [Reserved]****§ 267.150 State assumption of responsibility.**

(a) If a State either assumes legal responsibility for an owner's or operator's compliance with the closure care or liability requirements of this part or assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with the requirements of §267.143 or §267.147 if the Regional Administrator determines that the State's assumption of responsibility is at least equivalent to the financial mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of State guarantees principally in terms of certainty of the availability of funds for the required closure care activities or liability

coverage and the amount of funds that will be made available. The Regional Administrator may also consider other factors as he deems appropriate. The owner or operator must submit to the Regional Administrator a letter from the State describing the nature of the State's assumption of responsibility together with a letter from the owner or operator requesting that the State's assumption of responsibility be considered acceptable for meeting the requirements of this subpart. The letter from the State must include, or have attached to it, the following information: the facility's EPA Identification Number, name, and address, and the amount of funds for closure care or liability coverage that are guaranteed by the State. The Regional Administrator will notify the owner or operator of his determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this subpart. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of § 267.143 or § 267.147, as applicable.

(b) If a State's assumption of responsibility is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart by use of both the State's assurance and additional financial mechanisms as specified in this subpart. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subpart.

## **SUBPART I—Use and Management of Containers**

### **§ 267.170 Does this subpart apply to me?**

This subpart applies to you if you own or operator a facility that treats or stores hazardous waste in containers under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b).

**§ 267.171 What standards apply to the containers?**

Standards apply to the condition of the containers, to the compatibility of waste with the containers, and to the management of the containers.

(a) Condition of containers. If a container holding hazardous waste is not in good condition( for example, it exhibits severe rusting or apparent structural defects) or if it begins to leak, you must either:

(1) Transfer the hazardous waste from this container to a container that is in good condition; or

(2) Manage the waste in some other way that complies with the requirements of this part.

(b) Compatibility of waste with containers. To ensure that the ability of the container to contain the waste is not impaired, you must use a container made of or lined with materials that are compatible and will not react with the hazardous waste to be stored.

(c) Management of containers. (1) You must always keep a container holding hazardous waste closed during storage, except when you add or remove waste.

(2) You must never open, handle, or store a container holding hazardous waste in a manner that may rupture the container or cause it to leak.

**§ 267.172 What are the inspection requirements?**

At least weekly, you must inspect areas where you store containers , looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

**§ 267.173 What standards apply to the container storage areas?**

(a) You must design and operate a containment system for your container storage areas according to the requirements in paragraph (b) of this section, except as otherwise provided by

paragraph (c) of this section.

(b) The design and operating requirements for a containment system are:

(1) A base must underlie the containers that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.

(2) The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids.

(3) The containment system must have sufficient capacity to contain 10% of the volume of containers, or the volume of the largest container, whichever is greater. This requirement does not apply to containers that do not contain free liquids.

(4) You must prevent run-on into the containment system unless the collection system has sufficient excess capacity, in addition to that required in paragraph (b)(3) of this section, to contain the liquid.

(5) You must remove any spilled or leaked waste and accumulated precipitation from the sump or collection area as promptly as is necessary to prevent overflow of the collection system.

(c) Except as provided in paragraph (d) of this section, you do not need a containment system as defined in paragraph (b) of this section for storage areas that store containers holding only wastes with no free liquids, if:

(1) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation, or

(2) The containers are elevated or are otherwise protected from contact with accumulated liquid.

(d) You must have a containment system defined by paragraph (b) of this section for storage areas that store containers holding FO20, FO21, FO22, FO23, FO26, and FO27 wastes , even if the wastes do not contain free liquids.

**§ 267.174 What special requirements must I meet for ignitable or reactive waste?**

You must locate containers holding ignitable or reactive waste at least 15 meters (50 feet) from your facility property line. You must also follow the general requirements for ignitable or reactive wastes that are specified in § 267.17(a).

**§ 267.175 What special requirements must I meet for incompatible wastes?**

(a) You must not place incompatible wastes, or incompatible wastes and materials (see appendix V to 40 CFR part 264 for examples), in the same container, unless you comply with § 267.17(b).

(b) You must not place hazardous waste in an unwashed container that previously held an incompatible waste or material.

(c) You must separate a storage container holding a hazardous waste that is incompatible with any waste or with other materials stored nearby in other containers, piles, open tanks, or surface impoundments from the other materials, or protect the containers by means of a dike, berm, wall, or other device.

**§ 267.176 What must I do when I want to stop using the containers?**

You must remove all hazardous waste and hazardous waste residues from the containment system. You must decontaminate or remove remaining containers, liners, bases, and soil containing, or contaminated with, hazardous waste or hazardous waste residues.

**§ 267.177 What air emission standards apply?**

You must manage all hazardous waste placed in a container according to the requirements



of subparts AA, BB, and CC of 40 CFR part 264. Under a standardized permit, the following control devices are permissible: thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

## **SUBPART J - Tank systems**

### **§ 267.190 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste in above-ground or on-ground tanks under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b).

(a) You do not have to meet the secondary containment requirements in § 267.195 if your tank systems do not contain free liquids and are situated inside a building with an impermeable floor. You must demonstrate the absence or presence of free liquids in the stored/treated waste, using Method 9095 (Paint Filter Liquids Test) as described in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11.

(b) You do not have to meet the secondary containment requirements of § 267.195(a) if your tank system, including sumps, as defined in 40 CFR 260.10, is part of a secondary containment system to collect or contain releases of hazardous wastes.

### **§ 267.191 What are the required design and construction standards for new tank systems or components?**

You must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. You must obtain a written assessment, reviewed and

certified by an independent, qualified registered professional engineer, following 40 CFR 270.11(d), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include, at a minimum, the following information:

- (a) Design standard(s) for the construction of tank(s) and/or the ancillary equipment.
- (b) Hazardous characteristics of the waste(s) to be handled.
- (c) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:

- (1) Factors affecting the potential for corrosion, such as:
  - (i) Soil moisture content.
  - (ii) Soil pH.
  - (iii) Soil sulfides level.
  - (iv) Soil resistivity.
  - (v) Structure to soil potential.
  - (vi) Influence of nearby underground metal structures (for example, piping).
  - (vii) Existence of stray electric current.
  - (viii) Existing corrosion-protection measures (for example, coating, cathodic protection).
- (2) The type and degree of external corrosion protection needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:
  - (i) Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc.

(ii) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (for example, impressed current or sacrificial anodes) and

(iii) Electrical isolation devices such as insulating joints, flanges, etc.

(d) Design considerations to ensure that:

(1) Tank foundations will maintain the load of a full tank.

(2) Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of § 267.18(a).

(3) Tank systems will withstand the effects of frost heave.

**§ 267.192 What handling and inspection procedures must I follow during installation of new tank systems?**

(a) You must ensure that you follow proper handling procedures to prevent damage to a new tank system during installation. Before placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

(1) Weld breaks.

(2) Punctures.

(3) Scrapes of protective coatings.

(4) Cracks.

(5) Corrosion.

(6) Other structural damage or inadequate construction/installation.

(b) You must remedy all discrepancies before the tank system is placed in use.

**§ 267.193 What testing must I do?**

You must test all new tanks and ancillary equipment for tightness before you place them in use. If you find a tank system that is not tight, you must perform all repairs necessary to remedy the leak(s) in the system before you cover, enclose, or place the tank system into use.

**§ 267.194 What installation requirements must I follow?**

(a) You must support and protect ancillary equipment against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

(b) You must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under § 267.191(c), to ensure the integrity of the tank system during use of the tank system. An independent corrosion expert must supervise the installation of a corrosion protection system that is field fabricated to ensure proper installation.

(c) You must obtain, and keep at the facility, written statements by those persons required to certify the design of the tank system and to supervise the installation of the tank system as required in §§ 267.192, 267.193, and paragraphs (a) and (b) of this section. The written statement must attest that the tank system was properly designed and installed and that you made repairs under § 267.192 and 267.193. These written statements must also include the certification statement as required in 40 CFR 270.11(d).

**§ 267.195 What are the secondary containment requirements?**

To prevent the release of hazardous waste or hazardous constituents to the environment, you must provide secondary containment that meets the requirements of this section for all new and existing tank systems.

(a) Secondary containment systems must be:

(1) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(b) To meet the requirements of paragraph (a) of this section, secondary containment systems must be, at a minimum:

(1) Constructed of or lined with materials that are compatible with the wastes(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic).

(2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift.

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time.

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. You must remove spilled or leaked waste and accumulated precipitation from the secondary containment system within 24 hours, or as promptly as possible to prevent harm to human health and the environment.

**§ 267.196 What are the required devices for secondary containment and what are their design, operating and installation requirements?**

(a) Secondary containment for tanks must include one or more of the following:

(1) A liner (external to the tank).

(2) A vault.

(3) A double-walled tank.

(4) An equivalent device; you must maintain documentation of equivalency at the facility.

(b) External liner systems must be:

(1) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary.

(2) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. The additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(3) Free of cracks or gaps.

(4) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s) (that is, capable of preventing lateral as well as vertical migration of the waste).

(c) Vault systems must be:

(1) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary.

(2) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to

contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(3) Constructed with chemical-resistant water stops in place at all joints (if any).

(4) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete.

(5) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

(i) Meets the definition of ignitable waste under 40 CFR 261.21.

(ii) Meets the definition of reactive waste under 40 CFR 261.21, and may form an ignitable or explosive vapor.

(6) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(d) Double-walled tanks must be:

(1) Designed as an integral structure (that is, an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell.

(2) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell.

(3) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time.

#### **§ 267.197 What are the requirements for ancillary equipment?**

You must provide ancillary equipment with secondary containment (for example, trench, jacketing, double-walled piping) that meets the requirements of § 267.196 (a) and (b), except for:

(a) Piping (exclusive of flanges, joints, valves, and other connections) that are visually

inspected for leaks on a daily basis.

(b) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis.

(c) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis.

(d) Pressurized aboveground piping systems with automatic shut-off devices (for example, excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

**§ 267.198 What are the general operating requirements for my tank systems?**

(a) You must not place hazardous wastes or treatment reagents in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) You must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include, at a minimum:

(1) Spill prevention controls (for example, check valves, dry disconnect couplings).

(2) Overfill prevention controls (for example, level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank).

(3) Sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) You must comply with the requirements of § 267.200 if a leak or spill occurs in the tank system.

**§ 267.199 What inspection requirements must I meet?**

You must comply with the following requirements for scheduling, conducting, and



documenting inspections.

(a) Develop and follow a schedule and procedure for inspecting overfill controls.

(b) Inspect at least once each operating day:

(1) Aboveground portions of the tank system to detect corrosion or releases of waste.

(2) Data gathered from monitoring and leak detection equipment (for example, pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (for example, dikes) to detect erosion or signs of releases of hazardous waste (for example, wet spots, dead vegetation).

(c) Inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) Confirm that the cathodic protection system is operating properly within six months after initial installation and annually thereafter.

(2) Inspect and/or test all sources of impressed current, as appropriate, at least every other month.

(d) Document, in the operating record of the facility, an inspection of those items in paragraphs (a) through (c) of this section.

#### **§ 267.200 What must I do in case of a leak or a spill?**

If there has been a leak or a spill from a tank system or secondary containment system, or if either system is unfit for use, you must remove the system from service immediately, and you must satisfy the following requirements:

(a) Immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Remove the waste from the tank system or secondary containment system.

(1) If the release was from the tank system, you must, within 24 hours after detecting the leak, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the material released was to a secondary containment system, you must remove all released materials within 24 hours or as quickly as possible to prevent harm to human health and the environment.

(c) Immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water.

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Report any release to the environment, except as provided in paragraph (d)(2) of this section, to the Regional Administrator within 24 hours of its detection. If you have reported the release pursuant to 40 CFR Part 302, that report will satisfy this requirement.

(1) You need not report on a leak or spill of hazardous waste if it is:

(i) Less than or equal to a quantity of one (1) pound, and

(ii) Immediately contained and cleaned up.

(2) Within 30 days of detection of a release to the environment, you must submit a report to the Regional Administrator containing the following information:

(i) The likely route of migration of the release

(ii) The characteristics of the surrounding soil (soil composition, geology, hydrogeology,

climate).

(iii) The results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, you must submit these data to the Regional Administrator as soon as they become available.

(iv) The proximity to downgradient drinking water, surface water, and populated areas.

(v) A description of response actions taken or planned.

(e) Either close the system or make necessary repairs.

(1) Unless you satisfy the requirements of paragraphs (e)(2) and (3) of this section, you must close the tank system according to § 267.201.

(2) If the cause of the release was a spill that has not damaged the integrity of the system, you may return the system to service as soon as you remove the released waste and make any necessary repairs.

(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, you must repair the system before returning the tank system to service.

(f) If you have made extensive repairs to a tank system in accordance with paragraph (e) of this section (for example, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), you may not return the tank system to service unless the repair is certified by an independent, qualified, registered, professional engineer in accordance with 40 CFR 270.11(d).

(1) The engineer must certify that the repaired system is capable of handling hazardous wastes without release for the intended life of the system.

(2) You must submit this certification to the Regional Administrator within seven days after returning the tank system to use.

**§ 267.201 What must I do when I stop operating the tank system?**

When you close a tank system, you must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless 40 CFR 261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in subparts G and H of this part.

**§ 267.202 What special requirements must I meet for ignitable or reactive wastes?**

(a) You may not place ignitable or reactive waste in tank systems, unless:

(1) You treat, render, or mix the waste before or immediately after placement in the tank system so that:

(i) You comply with § 267.17(b), and

(ii) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this chapter, or

(2) You store or treat the waste in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(3) You use the tank system solely for emergencies.

(b) If you store or treat ignitable or reactive waste in a tank, you must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981), (incorporated by reference, see 40 CFR 260.11).

**§ 267.203 What special requirements must I meet for incompatible wastes?**

(a) You may not place incompatible wastes, or incompatible wastes and materials, in the same tank system, unless you comply with § 267.17(b).

(b) You may not place hazardous waste in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless you comply with § 267.17(b).

#### **§ 267.204 What air emission standards apply?**

You must manage all hazardous waste placed in a tank following the requirements of subparts AA, BB, and CC of 40 CFR part 264. Under a standardized permit, the following control devices are permissible: thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

### **SUBPART DD--Containment buildings**

#### **§ 267.1100 Does this subpart apply to me?**

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste in containment buildings under a 40 CFR part 270, subpart I standardized permit, except as provided in § 267.1(b). Storage and/or treatment in your containment building is not land disposal as defined in 40 CFR 268.2 if your unit meets the requirements of §§ 267.1101, 267.1102, and 267.1103.

#### **§ 267.1101 What design and operating standards must my containment building meet?**

Your containment buildings must comply with the design and operating standards in this section. EPA will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of this section.

(a) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-on), and to assure containment

of managed wastes.

(b) The floor and containment walls of the unit, including the secondary containment system, if required under § 267.1103, must be designed and constructed of manmade materials of sufficient strength and thickness to:

(1) Support themselves, the waste contents, and any personnel and heavy equipment that operates within the unit

(2) Prevent failure due to:

(i) Pressure gradients, settlement, compression, or uplift.

(ii) Physical contact with the hazardous wastes to which they are exposed

(iii) Climatic conditions.

(iv) Stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls.

(v) Collapse or other failure.

(c) All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes.

(d) You must not place incompatible hazardous wastes or treatment reagents in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(e) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(f). If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and

windows that meet these criteria:

- (1) They provide an effective barrier against fugitive dust emissions under § 267.1102(d) .
- (2) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.
- (g) You must inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.
- (h) You must obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of §§ 267.1102, 267.1103, and paragraphs (a) through (f) of this section.

**§ 267.1102 What other requirements must I meet to prevent releases?**

You must use controls and practices to ensure containment of the hazardous waste within the unit; and must, at a minimum:

- (a) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier.
- (b) Maintain the level of the stored/treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded.
- (c) Take measures to prevent personnel or by equipment used in handling the waste from tracking hazardous waste out of the unit. You must designate an area to decontaminate equipment, and you must collect and properly manage any rinsate.
- (d) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR part 60, appendix A,

Method 22--Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). In addition, you must operate and maintain all associated particulate collection devices (for example, fabric filter, electrostatic precipitator) with sound air pollution control practices. You must effectively maintain this state of no visible emissions at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

**§ 267.1103 What additional design and operating standards apply if liquids will be in my containment building?**

If your containment building will be used to manage hazardous wastes containing free liquids or treated with free liquids, as determined by the paint filter test, by a visual examination, or by other appropriate means, you must include:

(a) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (for example, a geomembrane covered by a concrete wear surface).

(b) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building.

(1) The primary barrier must be sloped to drain liquids to the associated collection system; and

(2) You must collect and remove liquids and waste to minimize hydraulic head on the containment system at the earliest practicable time.

(c) A secondary containment system, including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system capable of detecting failure of the primary barrier and collecting accumulated hazardous



wastes and liquids at the earliest practical time.

(1) You may meet the requirements of the leak detection component of the secondary containment system by installing a system that is, at a minimum:

- (i) Constructed with a bottom slope of 1 percent or more; and
- (ii) Constructed of a granular drainage material with a hydraulic conductivity of  $1 \times 10^{-2}$  cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of  $3 \times 10^{-5}$  m<sup>2</sup>/sec or more.

(2) If you will be conducting treatment in the building, you must design the area in which the treatment will be conducted to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(3) You must construct the secondary containment system using materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building.

**§ 267.1104 How may I obtain a waiver from secondary containment requirements?**

Notwithstanding any other provision of this subpart the Regional Administrator may waive requirements for secondary containment for a permitted containment building where you:

- (a) Demonstrate that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and
- (b) Containment of managed wastes and dust suppression liquids can be assured without a secondary containment system.

**§ 267.1105 What do I do if my containment building contains areas both with and without secondary containment?**

For these containment buildings, you must:

(a) Design and operate each area in accordance with the requirements enumerated in §§ 267.1101 through 267.1103.

(b) Take measures to prevent the release of liquids or wet materials into areas without secondary containment.

(c) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

**§ 267.1106 What do I do if I detect a release?**

Throughout the active life of the containment building, if you detect a condition that could lead to or has caused a release of hazardous waste, you must repair the condition promptly, in accordance with the following procedures.

(a) Upon detection of a condition that has lead to a release of hazardous waste (for example, upon detection of leakage from the primary barrier) you must:

(1) Enter a record of the discovery in the facility operating record;

(2) Immediately remove the portion of the containment building affected by the condition from service;

(3) Determine what steps you must take to repair the containment building, to remove any leakage from the secondary collection system, and to establish a schedule for accomplishing the cleanup and repairs; and

(4) Within 7 days after the discovery of the condition, notify the Regional Administrator of the condition, and within 14 working days, provide a written notice to the Regional Administrator with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(b) The Regional Administrator will review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify you of the determination and the underlying rationale in writing.

(c) Upon completing all repairs and cleanup, you must notify the Regional Administrator in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with paragraph (a)(4) of this section.

**§ 267.1107 Can a containment building itself be considered secondary containment?**

Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions.

(a) A containment building can serve as an external liner system for a tank, provided it meets the requirements of § 267.196(a).

(b) The containment building must also meet the requirements of § 267.195(a), (b)(1) and (2) to be considered an acceptable secondary containment system for a tank.

**§ 267.1108 What must I do when I stop operating the containment building?**

When you close a containment building, you must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.) contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless 40 CFR 261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in subparts G and H of this part.

## PERMIT PROGRAM

11. The authority citation for Part 270 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

### SUBPART A - General Information

12. Section 270.1(b) is amended by adding a sentence after the second sentence of paragraph (b) to read as follows:

#### § 270.1 Purpose and scope of these regulations.

\* \* \* \* \*

(b) \* \* \* Facilities that generate hazardous waste and then non-thermally treat or store the hazardous waste in tanks, containers, or containment buildings, may be eligible for a standardized permit under subpart I of this part. \* \* \*

\* \* \* \* \*

13. Section 270.2 is amended by revising the definition for “Permit” and adding a definition for “Standardized permit” in alphabetical order to read as follows:

#### § 270.2 Definitions.

\* \* \* \* \*

Permit means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of this part and parts 271 and 124 of this chapter. Permit includes permit by rule (§ 270.60), emergency permit (§ 270.61) and standardized permit (subpart I of this part). Permit does not include RCRA interim status (subpart G of this part), or any permit which has not been the subject of final agency action, such as a draft permit or a proposed permit.

\* \* \* \* \*

Standardized permit means a RCRA permit issued under part 124, subpart G of this chapter and subpart I of this part authorizing the facility owner or operator to manage hazardous waste. The standardized permit may have two parts: a uniform portion issued in all cases and a supplemental portion issued at the Director's discretion.

\* \* \* \* \*

## **SUBPART B - Permit Application**

14. Section 270.10 is amended by revising paragraphs (a) and (h) to read as follows:

### **§ 270.10 General application requirements.**

(a) Applying for a permit. Below is information on how to obtain a permit and where to find requirements for specific permits:

- (1) If you are covered by RCRA permits by rule (§ 270.60), you need not apply.
- (2) If you currently have interim status, you must apply for permits when required by the Director.
- (3) If you are required to have a permit (including new applicants and permittees with expiring permits) you must complete, sign, and submit an application to the Director as described in this section and §§ 270.70 through 270.73.
- (4) If you are seeking an emergency permit, the procedures for application, issuance, and administration are found exclusively in §270.61.
- (5) If you are seeking a research, development, and demonstration permit, the procedures for application, issuance, and administration are found exclusively in §270.65.
- (6) If you are seeking a standardized permit, the procedures for application and issuance are found in part 124, subpart G of this chapter and subpart I of this part.

\* \* \* \* \*

(h) Reapplying for a permit. If you have an effective permit and you want to reapply for a new one, you have two options:

(1) You may submit a new application at least 180 days before the expiration date of the effective permit, unless the Direction allows a later date; or

(2) If you intend to be covered by a standardized permit, you may submit a Notice of Intent as described in § 270.51(e)(1) at least 180 days before the expiration date of the effective permit, unless the Director allows a later date. (The Director may not allow you to submit applications or Notices of Intent later than the expiration date of the existing permit, except as allowed by § 270.51(e)(2)).

\* \* \* \* \*

#### **SUBPART D - Changes to Permits**

15. Section 270.40(b) is amended by revising the first sentence of paragraph (b) to read as follows:

##### **§ 270.40 Transfer of permits.**

\* \* \* \* \*

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director in accordance with § 270.42 or as a routine change under 40 CFR 124.212. \* \* \*

\* \* \* \* \*

16. Section§ 270.41 is amended by revising the next to last sentence of the introductory paragraph and adding paragraph (b)(3) to read as follows:

##### **§ 270.41 Modification or revocation and reissuance of permits.**

\* \* \* If a permit modification is requested by the permittee, the Director shall approve

or deny the request according to the procedures of § 270.42, or § 270.320 and 40 CFR part 124, subpart G. \* \* \*

\* \* \* \* \*

(b) \* \* \*

(3) The Director has received notification under 40 CFR 124.202 (b) of a facility owner or operator's intent to be covered by a standardized permit.

\* \* \* \* \*

## **SUBPART E - Expiration and Continuation of Permits**

17. Section 270.51 is amended by adding paragraph (e) as follows:

### **§ 270.51 Continuation of expiring permits.**

\* \* \* \* \*

(e) *Standardized permits.*

(1) The conditions of your expired standardized permit continue until the effective date of your new permit (see 40 CFR 124.15) if all of the following are true:

(i) If EPA is the permit-issuing authority.

(ii) If you submit a timely and complete notice of intent under 40 CFR 124.202(b) requesting coverage under a RCRA standardized permit; and

(iii) If the Director, through no fault on your part, does not issue your permit before your previous permit expires (for example, where it is impractical to make the permit effective by that date because of time or resource constraints).

(2) In some cases, the Director may notify you that you are not eligible for a standardized permit (see 40 CFR 124.206). In those cases, the conditions of your expired permit will continue if you submit the information specified in paragraph (a)(1) of this section (that is, a complete

application for a new permit) within 60 days after you receive our notification that you are not eligible for a standardized permit.

## **SUBPART F - Special Forms of Permits**

18. Add § 270.67 to subpart F to read as follows:

### **§ 270.67 RCRA Standardized Permits for Storage and Treatment Units.**

RCRA standardized permits are special forms of permits for facility owners or operators that generate hazardous waste and then non-thermally treat or store the hazardous waste in tanks, containers, or containment buildings. Standardized permit facility owners or operators are regulated under subpart I of this part, part 124 subpart G of this chapter, and part 267 of this chapter.

19. Subpart I is added to part 270 to read as follows:

## **Subpart I - RCRA Standardized Permits for Storage and Treatment Units**

### **GENERAL INFORMATION ABOUT STANDARDIZED PERMITS**

Sec.

270.250 What is a RCRA standardized permit?

270.255 Who is eligible for a standardized permit?

270.260 What requirements of Part 270 apply to a standardized permit?

### **APPLYING FOR A STANDARDIZED PERMIT**

270.270 How do I apply for a standardized permit?

270.275 What information must I submit to the permitting agency to support my standardized permit application?

270.280 What are the certification requirements?

270.285 What happens if my facility is not in compliance with 40 CFR part 267 requirements at



the time I submit my notice of intent?

#### INFORMATION THAT MUST BE KEPT AT YOUR FACILITY

270.290 What general types of information must I keep at my facility?

270.300 What container information must I keep at my facility?

270.305 What tank information must I keep at my facility?

270.310 What equipment information must I keep at my facility?

270.315 What air emissions control information must I keep at my facility?

#### MODIFYING A STANDARDIZED PERMIT

270.320 How do I modify my RCRA standardized permit?

#### GENERAL INFORMATION

##### **§ 270.250 What is a RCRA standardized permit?**

A RCRA standardized permit (RCRA) is a special type of permit that authorizes you to manage hazardous waste. It is issued under 40 CFR part 124, subpart G and subpart I of this part.

##### **§ 270.255 Who is eligible for a standardized permit?**

If you generate hazardous waste and then non-thermally treat or store the hazardous waste in tanks, containers, or containment buildings, you may be eligible for a standardized permit. We will inform you of your eligibility when we make a decision on your permit application.

##### **§ 270.260 What requirements of Part 270 apply to a standardized permit?**

The following subparts and sections of this part 270 apply to a standardized permit:

- (a) Subpart A - General Information: all sections.
- (b) Subpart B - Permit Application: § 270.10, 270.11, 270.12, 270.13 and 270.29.
- (c) Subpart C - Permit Conditions : all sections.
- (d) Subpart D - Changes to Permit: § 270.40, 270.41, and 270.43.

- (e) Subpart E - Expiration and Continuation of Permits: all sections.
- (f) Subpart F - Special Forms of Permits: § 270.67.
- (g) Subpart G - Interim Status: all sections.
- (h) Subpart H - Remedial Action Plans: does not apply.
- (i) Subpart I - Standardized Permits: all sections.

#### APPLYING FOR A STANDARDIZED PERMIT

##### **§ 270.270 How do I apply for a standardized permit?**

You apply for a standardized permit by following the procedures in 40 CFR part 124, subpart G and this subpart.

##### **§ 270.275 What information must I submit to the permitting agency to support my standardized permit application?**

The information in paragraphs (a)-(f) of this section will be the basis of your standardized permit application. You must submit it to the Director when you submit your Notice of Intent under 40 CFR 124.202(b) requesting coverage under a RCRA standardized permit:

- (a) The Part A information described in § 270.13.
- (b) A meeting summary and other materials required by 40 CFR 124.31.
- (c) Documentation of compliance with the location standards of 40 CFR 267.18 and § 270.14(b)(11).
- (d) Information that allows the Director to carry out our obligations under other Federal laws required in § 270.3.
- (e) Solid waste management unit information required by § 270.14(d).
- (f) A certification meeting the requirements of § 270.280 and an audit of the facility's compliance status with 40 CFR part 267 as required by § 270.280.

**§ 270.280 What are the certification requirements?**

You must submit a signed certification based on your audit of your facility's compliance with 40 CFR part 267.

(a) Your certification must read:

I certify under penalty of law that:

(1) My facility (include paragraph (a)(1)(i) or (ii) of this section, whichever applies) :

(i) complies with all applicable requirements of 40 CFR part 267 and will continue to comply until the expiration of the permit; or

(ii) will come into compliance before permit issuance with all applicable requirements of 40 CFR part 267 and will then continue to comply until expiration of the permit.

(2) I will make all information that I am required to maintain at my facility by §§ 270.290 through 277.315 readily available for review by the permitting agency and the public; and,

(3) I will continue to make all information required by §§ 270.290 through 277.315 available until the permit expires. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.

(b) You must sign this certification following the requirements of § 270.11(a)(1) through (3).

(c) This certification must be based upon an audit that you conduct of your facility's compliance status with 40 CFR part 267. You must submit this audit to the Director with the 40 CFR 124.202(b) notice of intent.

**§ 270.285 What happens if my facility is not in compliance with 40 CFR part 267 requirements at the time I submit my notice of intent?**

(a) If your facility is not in compliance with applicable requirements of 40 CFR part 267 at the time you submit your Notice of Intent, you must submit a compliance schedule to the Director. This schedule must include an enforceable sequence of actions with milestones, leading to compliance with the requirements for which your facility is in noncompliance at the time your Notice of Intent submittal.

(b) Before the Director issues your permit, your facility must be in compliance with applicable 40 CFR part 267 requirements.

#### INFORMATION THAT MUST BE KEPT AT YOUR FACILITY

##### **§ 270.290 What general types of information must I keep at my facility?**

You must keep the following information at your facility:

- (a) A general description of the facility.
- (b) Chemical and physical analyses of the hazardous waste and hazardous debris handled at the facility. At a minimum, these analyses must contain all the information you must know to treat or store the wastes properly under the requirements of 40 CFR part 267.
- (c) A copy of the waste analysis plan required by 40 CFR 267.13(b).
- (d) A description of the security procedures and equipment required by 40 CFR 267.14, or a justification demonstrating the reasons for your waiver from these requirements.
- (e) A copy of the general inspection schedule required by 40 CFR 267.15(b). You must include in the inspection schedule applicable requirements of 40 CFR 267.174, 267.193, 267.195, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1088.
- (f) A justification of any modification of the preparedness and prevention requirements of 40 CFR part 267, subpart C.
- (g) A copy of the contingency plan required by 40 CFR part 267, subpart D.

(h) A description of procedures, structures, or equipment used at the facility to:

- (1) Prevent hazards in unloading operations (for example, use ramps, special forklifts),
- (2) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, with berms, dikes, trenches),
- (3) Prevent contamination of water supplies,
- (4) Mitigate effects of equipment failure and power outages,
- (5) Prevent undue exposure of personnel to hazardous waste (for example, requiring protective clothing), and
- (6) Prevent releases to atmosphere,

(i) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required by 40 CFR 267.17.

(j) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes; describe access road surfacing and load bearing capacity; show traffic control signals).

(k) [Reserved]

(l) An outline of both the introductory and continuing training programs you will use to prepare employees to operate or maintain your facility safely as required by 40 CFR 267.16. A brief description of how training will be designed to meet actual job tasks under 40 CFR 267.16(a)(3) requirements.

(m) A copy of the closure plan required by 40 CFR 267.112. Include, where applicable, as part of the plans, specific requirements in 40 CFR 267.176, 267.201, and 267.1108.

(n) [Reserved]

(o) The most recent closure cost estimate for your facility prepared under 40 CFR 267.142

and a copy of the documentation required to demonstrate financial assurance under 40 CFR 267.143. For a new facility, you may gather the required documentation 60 days before the initial receipt of hazardous wastes.

(p) [Reserved]

(q) Where applicable, a copy of the insurance policy or other documentation that complies with the liability requirements of 40 CFR 267.147. For a new facility, documentation showing the amount of insurance meeting the specification of 40 CFR 267.147(a) that you plan to have in effect before initial receipt of hazardous waste for treatment or storage.

(r) Where appropriate, proof of coverage by a State financial mechanism as required by 40 CFR 267.149 or 267.150.

(s) A topographic map showing a distance of 1000 feet around your facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). The map must show elevation contours. The contour interval must show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). If your facility is in a mountainous area, you should use large contour intervals to adequately show topographic profiles of facilities. The map must clearly show the following:

- (1) Map scale and date.
- (2) 100-year floodplain area.
- (3) Surface waters including intermittent streams.
- (4) Surrounding land uses (residential, commercial, agricultural, recreational).
- (5) A wind rose (i.e., prevailing wind-speed and direction).

- (6) Orientation of the map (north arrow).
- (7) Legal boundaries of your facility site.
- (8) Access control (fences, gates).
- (9) Injection and withdrawal wells both on-site and off-site.
- (10) Buildings; treatment, storage, or disposal operations; or other structure (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.)
- (11) Barriers for drainage or flood control.
- (12) Location of operational units within your facility, where hazardous waste is (or will be) treated or stored. (Include equipment cleanup areas).

**§ 270.300 What container information must I keep at my facility?**

If you store or treat hazardous waste in containers, you must keep the following information at your facility:

- (a) A description of the containment system to demonstrate compliance with container storage area provisions of 40 CFR 267.173. This description must show the following:
  - (1) Basic design parameters, dimensions, and materials of construction.
  - (2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.
  - (3) Capacity of the containment system relative to the number and volume of containers to be stored.
  - (4) Provisions for preventing or managing run-on.
  - (5) How accumulated liquids can be analyzed and removed to prevent overflow.
- (b) For storage areas that store containers holding wastes that do not contain free liquids, a

demonstration of compliance with 40 CFR 267.173(c), including:

- (1) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids.
- (2) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.
- (c) Sketches, drawings, or data demonstrating compliance with 40 CFR 267.174 (location of buffer zone (15m or 50ft) and containers holding ignitable or reactive wastes) and 40 CFR 267.175(c) (location of incompatible wastes in relation to each other), where applicable.
- (d) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with 40 CFR 267.175 (a) and (b), and 267.17 (b) and (c).
- (e) Information on air emission control equipment as required by § 270.315.

**§ 270.305 What tank information must I keep at my facility?**

If you use tanks to store or treat hazardous waste, you must keep the following information at your facility:

- (a) A written assessment that is reviewed and certified by an independent, qualified, registered professional engineer on the structural integrity and suitability for handling hazardous waste of each tank system, as required under 40 CFR 267.191 and 267.192.
- (b) Dimensions and capacity of each tank.
- (c) Description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents).
- (d) A diagram of piping, instrumentation, and process flow for each tank system.
- (e) A description of materials and equipment used to provide external corrosion



protection, as required under 40 CFR 267.191.

(f) For new tank systems, a detailed description of how the tank system(s) will be installed in compliance with 40 CFR 267.192 and 267.194.

(g) Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of 40 CFR 267.195 and 267.196.

(h) [Reserved]

(i) Description of controls and practices to prevent spills and overflows, as required under 40 CFR 267.198.

(j) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of 40 CFR 267.202 and 267.203.

(k) Information on air emission control equipment as required by § 270.315.

### **§ 270.310 What equipment information must I keep at my facility?**

If your facility has equipment to which 40 CFR part 264, subpart BB applies, you must keep the following information at your facility:

(a) For each piece of equipment to which 40 CFR part 264 subpart BB applies:

(1) Equipment identification number and hazardous waste management unit identification.

(2) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(3) Type of equipment (e.g., a pump or a pipeline valve).

(4) Percent by weight of total organics in the hazardous waste stream at the equipment.

(5) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(6) Method of compliance with the standard (e.g., monthly leak detection and repair, or equipped with dual mechanical seals).

(b) For facilities that cannot install a closed-vent system and control device to comply with 40 CFR Part 264, subpart BB on the effective date that the facility becomes subject to the subpart BB provisions, an implementation schedule as specified in 40 CFR 264.1033(a)(2).

(c) Documentation that demonstrates compliance with the equipment standards in 40 CFR 264.1052 and 264.1059. This documentation must contain the records required under 40 CFR 264.1064.

(d) Documentation to demonstrate compliance with 40 CFR 264.1060 must include the following information:

- (1) A list of all information references and sources used in preparing the documentation.
- (2) Records, including the dates, of each compliance test required by 40 CFR 264.1033(j).
- (3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of “ATPI Course 415: Control of Gaseous Emissions” (incorporated by reference as specified in 40 CFR 260.11) or other engineering texts acceptable to the Director that present basic control device design information. The design analysis must address the vent stream characteristics and control device operation parameters as specified in 40 CFR 264.1035(b)(4)(iii).

(4) A statement you signed and dated certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonable expected to occur.

(5) A statement you signed and dated certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

**§ 270.315 What air emissions control information must I keep at my facility?**

If you have air emission control equipment subject to 40 CFR part 264, subpart CC, you must keep the following information at your facility:

(a) Documentation for each floating roof cover installed on a tank subject to 40 CFR 264.1084(d)(1) or (d)(2) that includes information you prepared or the cover manufacturer/vendor provided describing the cover design, and your certification that the cover meets applicable design specifications listed in 40 CFR 264.1084(e)(1) or (f)(1).

(b) Identification of each container area subject to the requirements of 40 CFR part 264, subpart CC and your certification that the requirements of this subpart are met.

(c) Documentation for each enclosure used to control air pollutant emissions from tanks or containers under requirements of 40 CFR 264.1084(d)(5) or 264.1086(e)(1)(ii). You must include records for the most recent set of calculations and measurements you performed to verify that the enclosure meets the criteria of a permanent total enclosure as specified in “Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure” under 40 CFR 52.741, appendix B.

(d) [Reserved]

(e) Documentation for each closed-vent system and control device installed under requirements of 40 CFR 264.1087 that includes design and performance information as specified in § 270.24 (c) and (d).

(f) An emission monitoring plan for both Method 21 in 40 CFR Part 60, appendix A and control device monitoring methods. This plan must include the following information: monitoring point(s), monitoring methods for control devices, monitoring frequency, procedures for documenting exceedences, and procedures for mitigating noncompliances.

MODIFYING A STANDARDIZED PERMIT

**§ 270.320 How do I modify my RCRA standardized permit?**

You can modify your RCRA standardized permit by following the procedures found in 40 CFR 124.211 through 124.213.